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Note by the Secretary-General

1. The attached document contains the second report of the United Nations Observer Mission in El Salvador (ONUSAL). The Mission has begun to exercise in full the verification powers granted it by the Agreement on Human Rights signed at San José on 26 July 1990 between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) (A/44/971-S/21541, annex).

2. The report of the Director of the ONUSAL Human Rights Division, which appears in the annex to this document, briefly describes the Mission's verification activities and the situation of human rights in El Salvador, indicating specific cases and relevant situations. The report of the Chief of the Mission describes the circumstances in which ONUSAL has had to operate as a result of its having been established prior to the cessation of the armed conflict, contrary to what was envisaged in the San José Agreement.

3. In presenting this second report, I should like to express my gratitude to the Governments of Spain, France and Italy for having made their police officers available for service in the verification Mission and the Governments of Brazil, Canada, Ecuador, Venezuela and, again, Spain for having offered the services of their military officials to provide liaison with the military chiefs of the two parties, in order to facilitate the Mission's complex and difficult tasks.

4. I should also like to express my gratitude to the Government of El Salvador and to FMLN, who have continued to extend their full support and cooperation to ONUSAL in its verification work.

## Second report of the United Nations Observer Mission in El Salvador

1. The first component of the United Nations Observer Mission in El Salvador (ONUSAL), authorized by the Security Council in its resolution 693 (1991), is now firmly established in the field, with four regional offices and two regional suboffices. The Human Rights Division, which is responsible for verifying the Agreement on Human Rights signed at San José on 26 July 1990 by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) (A/44/971-S/21541, annex), completed its preparatory phase at the end of September, and on 1 October 1991 began to perform in full the functions assigned to it by the San José Agreement. Its report, which covers the period between 1 September and 31 October 1991, is annexed to this document. Its previous report (A/45/1055-S/23037) covered the period from the establishment of the Mission on 26 July to 31 August 1991.

2. ONUSAL is currently operating in a tense atmosphere, which is exacerbated by the polarization of the political situation in El Salvador. The signing of the New York Agreement on 25 September 1991 (A/46/502-S/23082, annex) gives reason to believe that the armed conflict is drawing to an end. This belief is reinforced by what could be considered a first breakthrough towards national reconciliation, newly perceptible in the functioning of the working group constituting the National Commission for the Consolidation of Peace (COPAZ) envisaged in the New York Agreement. The latter is still in its informal phase, in which delegates from all the political parties represented in the National Assembly come together to discuss and establish guidelines for the preliminary drafting of secondary legislation enabling the political agreements adopted at the negotiating table to be incorporated into El Salvador's legal system. However, some sectors of both parties have voiced strong reservations about the direction and rate of the negotiations and apprehension at the political, legal and social insecurity that might arise as a result of the end of the conflict. This dichotomy is reflected in the fact that while the National Assembly is ratifying constitutional reforms emanating from the political agreements reached at the negotiating table the fighting has intensified, resulting in an escalation of violence in the country. However, the announcement by FMLN of a unilateral cessation of offensive operations, just as this report was being completed, and the positive response of the Government of El Salvador are encouraging signs.

3. The continuation of the armed conflict during the period covered by this report has direct repercussions for ONUSAL. It is true that the Mission has received every cooperation from both parties in performing its functions and has established, for that purpose, a coordinating mechanism and a working method with both parties at a number of levels. In this sense, it seems to enjoy complete freedom of movement and access in its efforts to verify human rights and has encountered no deliberate obstruction. However, ONUSAL has recently come under criticism from some political sectors which apparently do not have a clear idea of its mandate and functions. The Mission has therefore taken the necessary steps to correct misinterpretations by publishing information in the country's major dailies.

4. The misconception of the Mission's mandate seems to derive from the expectation that ONUSAL will give its opinion on military actions or aspects which do not fall within its mandate. This expectation has arisen because ONUSAL began its verification work before the cessation of the armed conflict. In some cases, there is misunderstanding as to the actual nature of its mandate. Its mandate is to verify compliance with the San José Agreement and to report thereon to the Secretary-General; its mandate does not include making public statements on what it has observed.

5. One particularly sensitive issue is that military clashes or operations which seriously threaten the safety of ONUSAL personnel often occur while such personnel are performing verification functions in the field. As a result, although the advice of the Mission's military advisers and the measures taken in this regard serve to reduce the danger, they do not completely eliminate it, and this is cause for concern.

6. In this connection, ONUSAL is convinced that the chiefs of the armed forces of El Salvador and of FMLN combatants are honouring fully their pledge to guarantee the safety of Mission personnel. It is clear that the Government of El Salvador has taken effective action to deal with the anonymous threats which ONUSAL received in the past, for which ONUSAL is grateful.

ANNEX

Report of the Director of the Human Rights Division

## I. CONTEXT IN WHICH VERIFICATION IS TAKING PLACE

1. During the period covered by this report, ONUSAL has continued to carry out its activities in a context of armed conflict which was not envisaged in the San José Agreement. However, the New York Agreement and the possibility of a cessation of the armed conflict make it likely that ONUSAL will soon be able to carry out its verification work in optimum conditions, in other words, in a context of peace and institutional reform in which the agreements currently under negotiation will be put into practice. This will not only eliminate many of the risks to which its personnel are exposed in their work, but also reduce the legal and political drawbacks which verification of the San José Agreement in a situation of armed conflict entails. An end to the conflict will also mean that ONUSAL will not be asked to give an opinion on purely military actions, to which the verification powers deriving from its mandate do not extend.

2. Despite the progress made in the negotiations and in the institutional reform, the armed conflict continues unabated, above all in the Departments of Cabañas, Chalatenango, Cuscatlán, Morazán and Usulután. Although military operations have been limited in the San Salvador metropolitan area, the mountainous area of Guazapa and the outskirts of Apopa, both of them close to the capital city on the trunk road heading north, have continued to see heavy fighting. This is unfortunate not only because the persistence of the conflict continues to cause casualties among the combatants, but also because it seriously affects the civilian population, creating situations in which human rights are violated. Since protecting the rights of the civilian population in this conflict situation is one of the Mission's main concerns, ONUSAL is not only maintaining an active presence in the areas most affected by the fighting but has also urged the parties to take the necessary precautions to minimize civilian casualties.

## II. ACTIVITIES OF THE HUMAN RIGHTS DIVISION

3. During the preparatory phase which ended on 30 September, ONUSAL set up its regional offices and laid the operational and conceptual bases for its future work. ONUSAL teams travelled all over the country, making contact with political, judicial and military authorities at the local, regional and national levels. Initial contacts were made with organizations representing civilian society, including human rights organizations and communities of resettled, repatriated and displaced persons, and others whose activities are relevant to the Mission's mandate. Despite the difficulties created by the conflict, ONUSAL also made its first contacts in the field with FMLN. It used the preparatory phase not only to establish its internal structure and its channels of communication with Salvadorian society, but also to familiarize

itself with national institutions, problems related to the armed conflict, and the situation of human rights in the country. During this phase, the Mission also received the first complaints of alleged human rights violations, which it followed up on a preliminary basis but did not investigate, save in exceptional cases.

4. On 1 October, ONUSAL entered its second phase of operations in which, in addition to continuing the activities described above, it has begun to investigate cases and situations involving human rights violations and to follow them up systematically with the competent State organs. The Mission has also maintained an ongoing dialogue with FMLN concerning its alleged violations of the San José Agreement. The purpose of all these activities has been to establish that allegations are true and to find out what the party concerned has done to punish the culprits and to prevent such violations in future.

5. During this phase, ONUSAL has significantly expanded its contacts with the parties, establishing flexible, stable coordination mechanisms with them. For instance, it holds regular working meetings with an inter-agency group of the Salvadorian Government; the group is coordinated by the Executive Secretary of the governmental Human Rights Commission and consists of representatives of the Supreme Court of Justice, the Armed Forces General Staff, the Office of the Attorney General and the Ministry of Foreign Affairs. It also holds regular coordination meetings at the highest level with the main State organs. In addition, it has expanded its local and regional contacts with the main political, judicial and military authorities, making frequent visits to mayor's offices, departmental governments, military and police units, law courts and other public entities. It also holds periodic coordination meetings at Mexico City or Managua with the FMLN Political and Diplomatic Commission and has ongoing functional contacts with local FMLN leaders inside the country.

6. The Mission's contacts with the parties are characterized by frankness and transparency; ONUSAL not only informs them of cases of alleged human rights violations attributed to them, but also gives its views and assessments as to how the parties are fulfilling their commitments under the San José Agreement. This direct dialogue has served to build mutual trust and has allowed ONUSAL to make recommendations in the hope that these will lead to an improvement in the human rights situation in the country.

7. The beginning of the second phase also saw the launching of the Mission's educational activities and of an information campaign designed to publicize its functions as widely as possible. In the first phase, the team of ONUSAL educators had worked in consultation with human rights organizations to design a programme for the promotion of human rights. This programme is already in operation, its initial aim being to publicize the Mission's mandate and the content of the San José Agreement. It is directed mainly at the armed forces, FMLN and social organizations and is intended to reinforce the educational activities carried out by national institutions. The Mission also launched a media campaign on 6 October to publicize its mandate as widely as possible

among the population. The success of the campaign can be measured by the marked increase in the number of people and institutions who approach ONUSAL either to file complaints or to request information or support for educational activities.

8. The San José Agreement stipulates that the Mission shall work in close cooperation with human rights organizations, which it has in fact been doing ever since it was established. ONUSAL has set up coordination mechanisms with non-governmental human rights organizations (see appendix I) in order to take advantage of the existence of common and complementary areas of activity. It is also cooperating with humanitarian organizations which, although not directly involved with human rights problems, have ties to certain vulnerable sectors of Salvadorian society, 1/ such as communities of persons repatriated from places of refuge abroad and/or persons displaced within the national territory.

9. It should be mentioned that, over the past decade, non-governmental human rights organizations have played a vital role in protecting and promoting the human rights of the most vulnerable sectors of society, in difficult and sometimes tragic circumstances. Quite a number of human rights activists were forced to go into exile, and some even lost their lives in the course of their work. Human rights organizations have been among the few organizations to investigate human rights violations and to protect their victims.

10. These organizations' vast experience makes them a valuable source of information for ONUSAL. Moreover, the Mission's presence serves to support and encourage non-governmental organizations. ONUSAL welcomes the opening of human rights offices inside the country. The Mission wishes to place on record its gratitude to the non-governmental organizations which supply it with information on the human rights situation, share with it their analyses of certain human rights problems and promote human rights in the country; these organizations include the non-governmental Human Rights Commission of El Salvador, the Human Rights Institute of José Simeón Cañas Central American University and the Legal Protection Office of the Archdiocese of San Salvador.

## III. CASES RELATING TO HUMAN RIGHTS AND HUMANITARIAN LAW

11. Under the San José Agreement, the Mission has the power to investigate cases and situations existing as from the date of its establishment, to draw conclusions therefrom and to make whatever recommendations it deems relevant. As a result, it will analyse cases involving acts likely to constitute violations of human rights as they are understood in the sixth preambular paragraph of the San José Agreement. It will also attempt to "clarify any situation which appears to reveal a systematic practice of human rights violations" (para. 11). It will therefore analyse situations which seem to reveal a multiplicity of violations of the same kind, committed or tolerated by whichever of the two parties is concerned. It will also be able to analyse circumstances which, in the context of the situation prevailing in the

country, may be considered relevant for bringing the situation of human rights under control. This report will deal with cases in the present section and will analyse situations in section IV.

12. Since it was set up, the Mission has received a little over 1,000 complaints of alleged human rights violations. These allegations have come both from people who visit the regional offices daily and from a variety of institutions concerned with the situation of human rights in El Salvador.

13. These complaints have begun to be analysed and it has been possible to begin the investigation of relevant cases likely to violate rights which are a priority for the mandate entrusted to the Mission. This section will analyse a selection of cases relating to those rights which ONUSAL has undertaken to verify, most of which continue as of the date of this report.

14. The cases presented correspond to acts which, according to the complaints made, occurred between 26 July 1991, the date of the Mission's establishment, and 31 October. Cases will be identified by the number assigned by each regional office. They will include the personal data of the victim, except where the victim does not agree to be identified, or where revealing his or her identity could put the victim at risk. In such cases, this information will be omitted to safeguard the confidentiality offered to people who turn to ONUSAL for help. In a number of communications, the Mission was even asked to omit specific references to the facts, for fear of possible reprisals.

15. Since it is impossible to include all the cases reported, a number of them relating to human rights and international humanitarian law have been selected for treatment in the following paragraphs. The allegations are illustrative of fairly widespread phenomena which could potentially constitute a systematic practice of violations to which, under the San José Agreement, the Mission must give priority attention. Through its analysis, the Mission will make recommendations concerning each right which, if implemented, could guarantee the application of the Agreement. Lastly, it should be mentioned that except where otherwise indicated, the data given in each case are based on the complaints.

16. This section is divided into two parts. The first part deals with a series of cases in which the responsibility of the State and its agents could appear to be incurred <u>prima facie</u>. It also includes cases in which, in theory, there may have been a breach of the State's obligation to provide safeguards, in other words, its duty to prevent illegal conduct and, if such conduct occurs, to investigate it thoroughly, independently and impartially and to bring the culprits to trial and punish them. 2/ The second part contains a selection of cases attributed, in theory, to members of FMLN.

17. Appendices II to IV contain sets of statistics. Appendix II provides statistics on the complaints received by ONUSAL during the period covered by this report. Appendix III reproduces statistics obtained from government sources, including statistics prepared by the governmental Human Rights Commission and by the Human Rights Office of the Armed Forces General Staff.

Appendix IV contains statistics prepared by the Legal Protection Office of the Archdiocese of San Salvador (henceforth referred to as Legal Protection) and those transmitted by the non-governmental Human Rights Commission of El Salvador.

## A. Cases attributed to the State

### 1. Right to life and to integrity and security of person

#### (a) Summary executions

18. This section will describe a number of cases, all of which are under judicial investigation and are considered representative of different kinds of attacks on the right to life: (a) deaths as a result of the excessive use of force by police; (b) deaths as a result of attacks by members or former members of military or police units, in abuse of their rank and without the consent of their institutions; and (c) deaths as a result of attacks by individuals or paramilitary groups. Each type of attack obviously incurs a different kind of responsibility for the State agencies responsible for ensuring the promotion of and respect for human rights. This particular question will be the subject of a specific commentary when we come to deal with the different types of cases considered.

19. No. ORSS/193: José Samuel Fuentes Marroquín, age 27, a day labourer, residing in the Department of La Libertad. According to the complaint, on 25 September 1991 Fuentes Morroquín was taken from his home by three men and driven in a taxi to a place where he died after being tortured. According to the evidence gathered, the victim was suspected of possessing weapons. When the corpse was found, it bore knife wounds and signs of mutilation. Two of the three individuals involved in the killing have been arrested by the Santa Tecla National Police. They were members of the National Police and the municipal police. ONUSAL carried out a number of investigations: it visited the Santa Tecla National Police, where it confirmed that the two people had been arrested, it interviewed the judge of the First Criminal Court and an attested witness and studied the documentary evidence so far assembled in the case. The judge of the Santa Tecla First Criminal Court is in charge of investigating the case.

20. What we have in the case described above is a situation resulting, in theory, from the excessive use of force by State agents which, if proved conclusively, would constitute a summary execution. However, it is praiseworthy that, despite the fact that the alleged perpetrators were police officers, the police investigation determined that they should be handed over to the judicial authorities. The attitude taken by the police authorities seems to send a clear message to members of the security forces that they must refrain from such practices in future.

21. No. ORSV/14: José María Chacón, age 41, a farmer, residing in the Department of San Vicente. He was allegedly killed on 21 September by an individual dressed in black military clothing and armed with an M-16 rifle. His wife and daughter were wounded. Army investigations have identified as the alleged culprit a soldier from the Fifth Brigade, who has been handed over to the competent judge. In this case, ONUSAL found that an autopsy had not been conducted on the victim. Moreover, the corresponding military unit did not hand in to the court the weapon allegedly used in the crime, and no evidence was gathered at the scene of the crime. ONUSAL talked to relatives and neighbours in order to gather information. It asked FMLN whether it had any information on the killing. It visited the San Cayetano justice of the peace, the San Vicente National Guard and the Fifth Brigade, and talked to the judge of San Vicente Second Criminal Court, who is in charge of investigating the case.

22. No. ORSS/68: Death of eight people at Comasagua, Department of La Libertad, on 17 August 1991. This case was reported to ONUSAL by the Ministry of Defence. It was also reported to the non-governmental Human Rights Commission of El Salvador and to Legal Protection. According to the report, at around 11.30 p.m. a soldier and an ex-soldier threw a hand grenade into a dance that was being held inside the Escuela Rural Mixta (Rural Mixed School) in Los Amates Canton, killing 8 of the people present and injuring a further 26. According to the Office of the Attorney General of the Republic, the alleged culprit has been identified and is outside the country. The Office and the corresponding judge are still investigating the case.

23. No. ORSS/109: Rosalío Hernández Méndez, age 50, residing in the Department of San Salvador. According to the complainants, who went directly to ONUSAL and also to Legal Protection, on 7 September 1991 the victim left home for work at 9 a.m. As he was passing the New Military Hospital, the soldiers guarding it allegedly asked him to buy something for them. Méndez refused, but said that he could do it later. According to the complaint, he stopped by the hospital at noon and offered to do what the soldiers had asked, whereupon the soldiers arrested him and took him to a place where he was allegedly beaten until the next morning. Méndez returned home barefoot, with severe injuries, and died at his home at 9.30 p.m. the same day. ONUSAL interviewed the head of hospital security, all the police who could have been on duty that day and the head of the Zacamil National Police Battalion. It has still not been possible to determine whether the victim was in fact beaten by members of the National Police. The judge of the Fourth Criminal Court is conducting the investigation of the case.

24. The cases mentioned in the three preceding paragraphs (ORSV/14, ORSS/68 and ORSS/109) involve deaths as a result of attacks committed by members or former members of military units in abuse of their rank, although there does not appear to be any collusion with their respective institutions. In some cases, military units have shown an interest in controlling such excesses by their members. ONUSAL has received additional information from the Armed Forces General Staff according to which, in September alone, 11 members of the armed forces were handed over to the judicial authorities for investigation of

their alleged responsibility for crimes against the life, personal safety and property of civilians. The full seriousness of such conduct must be emphasized. State responsibility in such situations is established by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985. 3/

25. The incidents under consideration also include situations where, although the alleged culprits were identified immediately, they appear not to have been apprehended, in contravention of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by General Assembly resolution 44/162 of 15 December 1989. 4/ This is something that can harm both the victims and the institutions to which the alleged perpetrators belong or used to belong. In cases involving members or former members of the armed forces, it is also disturbing that military weaponry is used, especially hand grenades and explosives, revealing insufficient monitoring of their use above and beyond the needs of the service. Decisive action to correct such excesses could help considerably to reduce their frequency.

26. No. ORSV/68: Rigoberto Hernández Argueta, age unknown, residing in the Department of La Paz. According to the complaint, Hernández Argueta was abducted from his home on 23 September 1991 by a group of 20 unknown persons dressed in olive-green camouflage uniforms and armed with rifles of various types and calibres. It is claimed that he was taken to the Champato river, close to his residence, and murdered there. The complaint was made by the army, which blamed the killing on "terrorist delinquents", a term it normally uses to refer to members of FMLN. However, FMLN members have not been held directly responsible for the incident. The previous day, 22 September 1991, a similar group consisting of 20 men dressed in olive-green camouflage and armed with various weapons had gone to another person's house, threatening to kill him if he did not give them 20,000 colones. Having been notified of the two incidents by different sources, ONUSAL referred the cases to the security forces for them to launch an investigation.

27. No. ORSS/164: Miguel Angel Martínez Vásquez, age 26, residing in the Department of San Salvador. This case was also reported to Legal Protection. On 24 September 1991, the body of Martínez Vásquez was found on the Avenida Juan Pablo Segundo in the city of San Salvador. Investigations revealed that the body had been thrown from a vehicle after the victim had been shot dead. A Construction Workers' Union card was found in the victim's clothing. It was later discovered that leaders of the Union had received written death threats from the so-called "Salvadorian Anti-Communist Front". ONUSAL interviewed the General Secretary of the Construction Workers' Union, the National Police and the fourth justice of the peace, who began the investigation of the case. The Assistant Attorney for Human Rights of the Office of the Attorney General of the Republic is involved in the case, and the cooperation of the Criminal Investigation Commission has been requested.

28. No. ORSS/75: José Edgardo Guevara Ramos and Oscar Armando López Lucero, ages unknown, both residing in the Department of San Salvador. According to the complaint, both of them worked as bus conductors. On 3 August 1991, they were near a bus stop on route 6 when a man of about 65, apparently poor, asked Guevara for money. As the young man was preparing to give him some coins, the stranger pulled out an UZI sub-machine-gun from under his clothing and pointed it at him. About six more men came up. They took the two young men and forced them into a red van without licence plates. The following day, both of them were found dead in a ravine near Ciudad Delgado. Guevara's body had 14 bullet wounds and López's 4. On top of their remains were flyers with the message "GANG OF THIEVES, THIS IS HOW YOU WILL ALL END UP", signed "THE AVENGERS", 5/ with a drawing of a skull. It should be noted that the corpses of two young men, in an advanced state of decay, had allegedly been found in the same place on a previous occasion. The Judge of Ciudad Delgado Criminal Court is in charge of investigating the case. ONUSAL interviewed the justice of the peace of Ciudad Delgado, who had notified it of the case, and the judge of the criminal court of that city, and inspected the site of the abduction and that of the subsequent murders.

29. No. ORSS/165: Waldo Acosta Brizuela, age 27, employee, residing in the Department of Chalatenango. At approximately 2.30 p.m. on 23 September, in the course of its verification activities, an ONUSAL team was informed of the discovery of the body of a person who, it was said, had been forced to get out of a vehicle about 20 minutes earlier and had been shot twice in the head. According to the information received, the incident occurred on the northern trunk road between Apopa and Mariona. The remains of the victim, who turned out to be a former member of the Treasury Police, were found on a rubbish dump. The ONUSAL team immediately informed the National Police and the justice of the peace, who visited the site of the discovery and initiated legal proceedings.

30. No. ORSS/99: Pedro N., age 21, residing in the Department of Cuscatlán. In this case, which was also reported to Legal Protection it is alleged that in August 1991, Pedro N. was taken violently from a public place by four unknown persons whose faces were covered and who wore uniforms and were armed with pistols. According to the complaint, these individuals put the victim in a vehicle and took him to another place, where they tortured him with knives, inflicting 16 wounds, killed him and left his body there. The competent judge is investigating the case. ONUSAL has interviewed relatives of the victim, witnesses of the abduction and the judge in charge of the case.

31. In the cases mentioned in the five preceding paragraphs (ORSV/68, ORSS/164, ORSS/75, ORSS/165 and ORSS/99), what must in theory be examined is the State's fulfilment of its obligation to provide safeguards, which, as noted in paragraph 16 of this section, establishes the need to prevent and, if necessary, investigate and punish illegal conduct. This is without prejudice to any evidence which the investigation may subsequently yield with respect to the determination of direct responsibility in each case. These cases present many of the characteristics of the phenomenon often reported as "death squad" activity. This is not a new phenomenon, but rather a practice of eliminating

people which has been going on in the country for many years. The facts gathered to date are not sufficient to indicate that agents of the State were directly involved in the aforementioned cases, or that the perpetrators acted with the support of the authorities or were tolerated by them. However, ONUSAL must point out that, even though this phenomenon has existed for a long time, the authorities do not seem to have adopted systematic measures for prevention, prompt and thorough investigation or effective legal proceedings, as recommended in the Principles endorsed by the General Assembly in its aforementioned resolution 44/162. It is understandable therefore that there seems to be an almost universal perception in Salvadorian society that such acts are the work of uncontrolled groups or groups whose impunity is somehow assured by the inaction and even the tolerance of the authorities.

32. As a general observation for all cases of suspected arbitrary or summary execution, including those in which complaints by relatives or other reliable reports suggest unnatural death in those circumstances, it should be recalled that a thorough, prompt and impartial investigation is always in order, whose purpose must be to determine the cause, manner and time of death, the person responsible and any pattern or practice which may have brought about that death. 6/ In general, according to the initial findings of the Mission's verification activities, there appear to be deficiencies in the gathering of evidence and the handling of the scene of the crime, in the hearing of testimony or in the provision of expert opinions on the corpus delicti and the determination of criminal responsibility.

33. In particular, in the cases under investigation, the competent authorities do not normally have bodies exhumed and subjected to autopsies. In this regard, the use of the recognized power of judges to order the immediate disposal of bodies should be reviewed. It should be noted that, according to the aforementioned Principles, the body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. 7/ Any other procedure may encourage doubts about the State's genuine interest in clarifying the circumstances of violent deaths and, in particular, the activities of the so-called "death squads".

(b) Death threats

34. No. ORSV/58: Pedro N., age 48, residing in the Department of Cabañas. According to the complainant, on 19 September a civil defence patrol threatened to kill him unless he gave up his land. He says he was able to identify one of the authors of the threats. ONUSAL brought this matter to the attention of the National Police and Civil Defence Headquarters and advised the complainant to lodge a complaint. He refused to do so, however, presumably out of fear.

35. No. SORU/103: Pedro N., age 25, residing in the Department of Usulután. On 22 October 1991, the complainant received a flyer signed by a clandestine group warning him to give up his activities, otherwise he would be forced to leave the area; if he did not leave, he would be killed. A few days later the

complainant was intercepted by a number of armed men who demanded that he leave the area.

36. No. ORSS/134: Mirtala López, age 22, a leader of the Comité Cristiano Pro-Desplazados de El Salvador (Christian Committee for Displaced Persons in El Salvador), residing in San Salvador. The complainant received three letters containing death threats on 12, 19 and 21 September, the last of which also contained a photograph of her. The threats were repeated on 24 September in a fax and a further letter signed by the Salvadorian Anti-Communist Front. Shortly before the letters were sent, an anonymous television spot was broadcast in which, in one frame the complainant and two other people were shown very clearly. While the frame was frozen, a voice spoke of "waves of agitators". According to the complainant, the spot was repeated a number of times and could have prompted the threats. ONUSAL brought this matter to the attention of the Office of the Attorney General, which is still investigating the case. It also contacted the Criminal Investigation Commission, which has started an investigation.

37. Death threats are a particularly serious practice and once they occur, States have a duty to take specific preventive measures. 8/ The victims of such threats remain exposed and at the mercy of their possible killers. Case No. ORSS/134 mentioned in paragraph 36 is particularly significant in that the authors declared themselves to be members of a clandestine organization and acted persistently to intimidate the complainant. In addition, it is clear that it was possible to use a mass communication medium to broadcast a spot without the organization or person responsible being properly identified. Given the abuses which can be committed against individuals through paid advertising space or television air time, the authorities should take urgent measures to identify the authors of such messages, although in such a way as to safeguard freedom of expression.

38. In all these cases, effective measures by State agencies are needed to put an end to the activities of these groups, which seem to be operating without restraints of any kind. The passivity shown by the authorities in these matters is tantamount to a clear dereliction of duty on the part of public officials and could also act as an incentive to the authors of such threats to persist in their activities, which are a breach of human rights.

(c) Enforced or involuntary disappearances

39. No. ORSA/39: Christian Vladimir Martínez, age 18, residing in the Department of Sonsonate. According to the information received, on 4 June 1991, Martínez was abducted from his home by five armed men in civilian clothing travelling in two vehicles. The men were looking for a friend of the victim, who had been arrested with him in April by the National Guard. Both had been subsequently released. According to the complaint, Martínez was taken in a van by his abductors to an unknown destination and his whereabouts are still unknown. On 26 June a remedy of habeas corpus was filed with the Supreme Court of Justice. The victim's family learned the outcome of the appeal on 5 September 1991. According to the Court's ruling, Martínez is not

being held by any of the security forces and his release can therefore not be ordered. His family has lodged complaints with the Office of the Attorney General and with the judge of the Armenia Court of First Instance.

40. The Mission has given special consideration to the possibility that enforced or involuntary disappearances may be continuing in the country. The case mentioned in the preceding paragraph is one of a number of such cases and is an indication that situations of this kind may still be occurring, although the Mission feels it would be premature to draw definite conclusions in this regard and, still more so, to give a final opinion on whether such practices are occurring systematically at the present time.

41. It is clear that the victim was deprived of his liberty, but it is not certain that agents of the State were responsible. A prompt, thorough and effective judicial investigation should certainly be made, as on all occasions in which enforced or involuntary disappearances are reported. The victim's family has clearly done everything it can to find out what has happened to him. After filing a remedy of habeas corpus, it lodged a complaint with the Office of the Attorney General of the Republic and with the competent court. We can only hope that this complaint will be examined with due diligence and with the support of auxiliary bodies. The Mission's investigation of the case is justified since, although the arrest or abduction took place before its mandate began, the ruling on the remedy of habeas corpus was given after that date.

42. The cases reported so far have not always been followed up. This makes it difficult to establish whether the victim is still missing and whether information has been requested from the State which would make it possible to ascertain his fate or whereabouts, particularly by means of a remedy of habeas corpus. The Mission's experience to date seems to indicate that in many cases the incidents reported were in fact military recruitments or illegal or arbitrary arrests. This suggests the need for a careful follow-up of cases, with a view to taking action on those which may actually constitute enforced or involuntary disappearances.

43. The authorities should make expeditious mechanisms available to complainants to enable them to ascertain the fate of their relatives without delay. The Detainee Information Department, which operates in the Supreme Court of Justice, could be an appropriate mechanism, but it would also need information on arrests by military units. If a procedure was available which enabled complainants to obtain speedy information on cases of recruitment it would be possible to clear up many complaints and concentrate instead on unexplained cases of enforced or involuntary disappearances.

(d) Torture and cruel, inhuman or degrading treatment or punishment

44. No. ORSA/60: Pedro N., age 28, a day labourer, residing in the Department of Santa Ana. According to the complaint, Pedro N., accompanied by his father, presented himself on the morning of 3 October 1991 at Civil Defence Headquarters, as he had deserted and did not want to remain in that

situation. He was taken to the cells in the municipal jail at about 11.15 a.m. that day and was seen that afternoon in good shape. At approximately 7 a.m. the following morning, his parents were informed at the prison that their son had been found hanged by means of a belt tied to the bars of a window, and that it was a case of suicide. The examination showed that there were 11 wounds on different parts of the body, as detailed in the report made by a forensic doctor. The mayor of the municipality informed the justice of the peace. The forensic doctor of the First Criminal Court conducted an autopsy and determined that the direct cause of death had been "asphyxia by hanging". However, neither the cause of the multiple wounds nor their direct relationship to the death could be established, although it was determined that they were caused during the victim's detention. ONUSAL investigated the case, interviewed relatives, the officer in charge of detainees, the local justice of the peace, the judge of the First Criminal Court of Santa Ana and the Office of the Attorney General of the Republic. The Mission has established that the autopsy report refers only to the direct cause of death and does not describe the victim's condition before he died. At the request of the Attorney General's Office, the judge of the First Criminal Court ordered the arrest of two prison officials, one of them high-ranking. The possible involvement of other suspects is still being investigated. The Mission recalls that the Principles endorsed by the General Assembly in resolution 44/162 establish norms of prevention which include cases in which death occurs in prison. 9/ The possibility clearly exists that in this case the victim died as a result of the numerous bodily injuries caused by torture. Although these facts are subject to investigation by the competent courts, if the above theory is confirmed, what we would have here is a case of summary execution.

45. No. ORSS/235: María N., age 20, living in the Department of La Libertad. According to the complaint, on 5 October 1991 the victim was arrested, with a companion, by civilians belonging to a military unit. She was taken to the cells at a military brigade barracks, where she says she was tied up, stripped naked and raped repeatedly during the night. The following day she was transferred to the National Police. ONUSAL visited the military unit and spoke to its commanders, and was informed that an internal investigation had been started because of the complaint. The Mission also visited the places where people are detained, checked the records and talked to the staff who were on duty on the night of the alleged events. Criminal proceedings have been brought before the competent judge, and the dossier includes a forensic medical report on the examination of the victim. The Criminal Investigation Commission is acting as an auxillary agency in these proceedings.

46. No. ORSA/11: Pedro N., age 22, residing in the Department of Santa Ana. He was arrested on 30 August 1991 by members of the National Guard. In the course of the arrest, he was badly beaten by his captors and accused of having killed someone. When he was visited by ONUSAL personnel, it was seen that he had hematomas on the mouth, forehead, cheekbones and right shoulder. On 3 September, the Santa Ana National Guard informed the Mission that he had been released without charge.

47. No. ORSS/25: Pedro N., age 18, and Pablo N., age 16. The two young men were arrested on 4 September 1991 by members of the National Guard and Army Military Detachment (DM) 5 in the Department of San Salvador, where they both reside. According to the complaint, hoods were placed over their heads and they were made to walk around the outskirts of the sector, observed by witnesses who said they had seen them being beaten. ONUSAL demanded information and on 8 September, DM-5 personnel admitted to the arrest and said that the two young men were being held at Cojutepeque on suspicion of belonging to FMLN. They were released the next day. Later, one of the victims confirmed to ONUSAL that he and the other victim had been beaten and threatened.

48. No. ORSS/259: Pedro N., age 19, and Pablo N., age 23, residing in the Department of La Libertad. They were both arrested on 4 October 1991 by the National Guard on suspicion of having taken part in an attack in which explosives were used. ONUSAL visited them in the cells of the local mayor's office on 5 October 1991 and was able to verify that one of them had knife wounds in the palms of his hands and had been beaten on his body; the other had head wounds, cuts on his body and bruises on his face and left eye. The local Justice of the Peace verified the existence of injuries and informed ONUSAL. The case is currently being heard by the judge of the Court of First Instance of the Department concerned. At the time of drafting this report, the two young men were still detained.

49. In the preceding paragraphs, we have described some cases in which ONUSAL was able to see direct evidence of torture or cruel, inhuman or degrading treatment or punishment. In other cases, such practices have been reported. This is clearly an issue to which the Mission will give special attention in carrying out its mandate. For the time being, it would be premature to give a definite opinion as to whether a systematic practice of torture and cruel, inhuman or degrading treatment or punishment exists in the country.

50. In general, two requirements must be met in order for a practice to be considered systematic: numerous violations of the same kind, and support or tolerance on the part of higher authorities. The Mission considers it appropriate to recall that as long as there are reasonable grounds for believing that an act of torture has been committed, the competent State authorities should, as a matter of routine, conduct an impartial inquiry without delay. Likewise, if an allegation of cruel, inhuman or degrading treatment or punishment is considered to be justified, the alleged culprit should be subjected to penal, disciplinary or other appropriate proceedings. 10/

51. There is broad agreement that the eradication of torture is directly linked, among other things, to the effective functioning of the remedy of habeas corpus and the restriction or abolition of incommunicado detention. In this respect, the San José Agreement (paras. 4 and 2 (e)) is clear, as regards both the commitment to give full support to the effectiveness of the remedy of habeas corpus, and the prohibition of incommunicado detention. The Mission's presence has brought about a change in the earlier situation, in that its

observers have been able to visit any detainee at any time and in any circumstances; this is an undoubted guarantee for persons deprived of their liberty. However, the Mission wishes to point out that, even now, defence lawyers are able to exercise this right during the period of administrative detention only as an exceptional basis. It must be pointed out, therefore, that in strict compliance with the San José Agreement, all detainees must be allowed to communicate with a lawyer they can trust during that period of detention.

### 2. Humane treatment

#### (a) Attacks on the life of persons

52. No. ORSS/163: Yesenia Roxana Escalante, age 20, FMLN combatant. The complaint was filed by the FMLN command. It alleges that in an armed clash which took place on 21 September in an area close to the village of La Mora, Department of Cuscatlán, Yesenia Escalante was wounded and later killed by members of the armed forces. Subsequently, sources on the spot revealed that she had been raped before being killed. ONUSAL has investigated this communication, but so far there seems to be no clear or precise proof of the allegations. The case is under judicial investigation.

53. The complaint mentioned in the preceding paragraph refers to the situation of a person who had been put out of action and hence, in accordance with the provisions of part II of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II, art. 4 (1)), should have been treated humanely in all circumstances. With regard to the incident reported, the Mission hopes that the judicial investigation will yield results and that it will be possible to shed light on the case, although it is aware that situations associated with armed conflict are difficult to verify. There have been very few reports of this kind of occurrence during the period covered by this report: in fact, only two similar communications have been received.

### 3. Civilian population

#### (a) Attacks on the civilian population

54. No. SORC/10: Hacienda Vieja Comunidad, Department of Chalatenango. The community was reportedly the target of a military attack carried out between 29 and 31 August by forces of the DM-2 of the Department of Cabañas, in which several people were wounded and civilian property was damaged. The verification by ONUSAL found that several small calibre mortar shells had landed in the yards of dwellings and others in the vicinity of the community and that a number of civilians had been wounded.

55. No. ORSV/9: Comunidad Santa Marta and others, Department of Cabañas. On 21 and 27 July and 7 and 8 August, members of the Treasury Police and the

DM-2, allegedly attacked the communities of Santa Marta, Valle Nuevo, El Zapote, San Antonio and La Bermuda with rifle and mortar fire, wounding a woman in San Antonio and causing material damage. The communities were visited by ONUSAL and in all of them it found traces of shots fired with such weapons.

56. No. ORSV/26: Repoblación San Francisco, Department of Cabañas. On 7 September, about 200 men from the DM-5, members of the National Guard and paratroopers reportedly arrived at the resettled village of San Francisco, where they fired shots into the air and fired machine-guns at a storehouse where the inhabitants keep food. They are also said to have threatened a woman by pointing a weapon at her. ONUSAL visited the community and confirmed that there were traces of the impact of shots on the outside walls of the storehouse, the only solid structure in the village. The Mission found that the evidence was compatible with the allegations made in the complaint.

57. Although the following considerations refer to the cases mentioned in the three preceding paragraphs (SORC/10, ORSV/9 and ORSV/26), which the complaints received attribute to the armed forces, the principles to which reference will be made apply to both parties to the conflict and should be respected by them. In an armed conflict, the objective is to undermine the military strength of the adversary in order to obtain a decisive advantage, and civilians who do not take a direct part in the hostilities must be respected and protected. This is what both written law and customary law establish on the subject. 11/ For reasons of military necessity, the contending parties may be unable to guarantee the complete immunity of the civilian population, in which case they must respect the fundamental principles on limiting the means of destruction, distinguishing between persons who take an active part in hostilities and the civilian population, and the principle of weighing the means used, the concrete and direct military advantage anticipated and the resulting injury to civilians and damage to civilian objects. 12/ These safeguards must always be observed in internal armed conflicts, in accordance with the principles of humanity referred to in the fourth preambular paragraph of Protocol II. 13/

58. According to the complaints discussed in paragraphs 54 and 55, the military operations in question caused civilian injuries which were confirmed by the Mission in the first of the cases cited. It was also established that the persons injured had been in the places and situations indicated in the account of the events. In the three cases in paragraphs 54, 55 and 56, ONUSAL was able to confirm the alleged damage to civilian objects as a result of the use of weapons of various kinds. The complainants also say that at the time of the events, there was no fighting going on in the vicinity. Of course, with such incidents it is very difficult to reconstruct after the fact exactly what happened. However, even assuming that fighting is under way, it is essential to avoid indiscriminate attacks or excessive use of force, which cause harm to the civilian population.

59. In the period covered by the report, events of this nature, attributable to the armed forces according to the complaints being examined, have, in the

Mission's view, been relatively infrequent, a fact that seems worth mentioning given the human suffering that any armed conflict entails. Nevertheless, it must be reiterated that the parties should redouble their efforts to ensure the general protection that the civilian population and individual civilians must enjoy against the dangers arising from military operations.

(b) Acts or threats of violence

60. No. ORSV/42: María and Pedro N., peasants residing in the Department of Cabañas, lodged a complaint alleging that on 9 September troops from the Departments of Chalatenango and Cuscatlán came to the community where they live, forced their way into María N's. house and threatened her, saying that her brothers were guerrilla members. They then forced their way into Pedro N.'s house to question his younger daughter about a radio that her father was allegedly using to communicate with FMLN. ONUSAL is investigating these complaints and has already collected evidence on them.

61. The protection of the civilian population includes the prohibition of acts or threats of violence the primary purpose of which is to spread terror among that population. All parties to the armed conflict should therefore refrain from resorting to conduct of the type referred to in the complaint in paragraph 60.

B. Cases attributed to FMLN

1. Humane treatment

(a) Attacks on the life of persons

62. No. ORSV/64: Serafino Orlando Merino Interiano, age 26, residing in San Salvador. A member of the Treasury Police, Merino apparently arrived in a village in the Department of Cabañas, heavily armed and drunk. He was captured there by FMLN and summarily executed on 31 July, 3 days after being apprehended. The local FMLN command admitted to ONUSAL that this had happened and said that such an extreme measure had been taken at the request of the community, which feared his release because of Merino's reputation as a "repressive element and torturer". This version was corroborated by the FMLN Political and Diplomatic Commission.

63. The case referred to in the preceding paragraph amounts to a summary or extrajudicial execution, in violation of the guarantees of humane treatment established in Protocol II, part II. In particular, it constitutes a serious violation of the fundamental guarantees prohibiting violence to the life of persons (Protocol II, art. 4 (2) (a)), the safeguards for persons deprived of their liberty (art. 5) and the safeguards relating to penal prosecutions (art. 6). It especially bears repeating that, as stipulated in the latter provision, in internal armed conflicts no sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential

guarantees of independence and impartiality. Lastly, it should be remembered that in internal armed conflicts, the fundamental rights accepted in international law and set forth in international instruments remain fully valid. 14/

64. No. ORSM/49: Pedro N., residing in San Miguel. According to a complaint filed by the armed forces, on 25 August a soldier - identified here as Pedro N. - who had been wounded in combat was evacuated by ambulance from one town to another in the Department of Morazán. According to the same source, the ambulance was stopped at a crossroads by FMLN combatants at around 5.30 p.m. that day. The guerrillas forced the driver and the nurse to get out of the vehicle and took the soldier out of the ambulance. They then questioned the driver and nurse and tried to destroy the ambulance. At around 8 p.m., the FMLN troops allowed the persons accompanying the soldier to return to Perquín with the body of the soldier, who had died in the meantime. It is claimed not only that the victim was alive when the ambulance was stopped, but also that his captors were directly responsible for his death since they allegedly cut off his serum supply. ONUSAL asked FMLN for information on the case and FMLN admitted to having detained the ambulance, knowing in advance that it was transporting a wounded man. The FMLN Political and Diplomatic Commission, when informed of the case, told ONUSAL that no agreement exists between the parties for the evacuation of armed forces wounded and dead by road from war zones. It added that a pledge is needed that armed forces ambulances will not be used for military purposes and that the army will not obstruct the evacuation of FMLN wounded and disabled by the International Committee of the Red Cross (ICRC).

65. It must be noted that, according to international humanitarian law, all wounded persons, whether or not they have taken part in the armed conflict, must be respected and protected. 15/ Of course, the contending parties in an internal armed conflict are not legally bound to allow the other party's medical transports to cross their own lines. However, by detaining an ambulance that was transporting a wounded man, FMLN assumed the obligation to provide him with the medical care required by his condition. ONUSAL has been able to ascertain that this obligation was not fulfilled, because there was no one in the group that intercepted the ambulance who could have provided the necessary medical assistance. It must therefore be concluded that FMLN, knowing that the soldier would not be able to receive the necessary care, should have allowed him to proceed and to receive the care to which he was entitled.

(b) Death threats

66. No. ORSM/166: Pedro N., age 26, residing in the Department of Morazán. He received a death threat on 6 October by means of public handbills, signed by FMLN and posted in the village where he lives accusing him of being an informer. ONUSAL brought the case to the attention of the local FMLN command, which explained to him that informers are first given a public warning and, if that has no effect, are then expelled from the area. However, if it comes to be known that their conduct has caused excessive harm, they are brought before a people's court, which can go so far as to pass a death sentence.

67. This is a case of threats of violence, for the purpose of intimidation, as prohibited by the provision on the protection of the civilian population. 16/ The explanation given by FMLN for the procedures it follows with respect to alleged informers does not appear compatible with the peremptory provisions of Protocol II that the parties must observe in penal prosecutions, especially those referring to the essential guarantees of independence and impartiality that a court must offer. 17/

## 2. Civilian population

### (a) Attacks on the civilian population

68. No. ORSM/91: Lorena del Carmen Díaz Romero, age 16, residing in the Department of San Miguel. According to a report by the armed forces, the victim died on 10 September as a result of wounds caused by a projectile fired by FMLN during a clash with the army. ONUSAL forwarded the report to FMLN and is awaiting its response. However, its own investigations have established that FMLN was indeed in the area that day and fired two projectiles, both of which landed on the house where the victim and her family were. Fragments from the projectiles matched those of projectiles used by FMLN. It was also established that the military units with which FMLN was engaged in combat were over 500 metres away from the place where the projectiles landed and in a different direction.

69. The prohibition on indiscriminate attacks which may strike military objectives and civilians alike is applicable to the case referred to in the preceding paragraph. The prohibition on carrying out attacks which may be expected to cause incidental loss of civilian life and injury to civilians which would be excessive in relation to the concrete and direct military advantage anticipated is also applicable in this case. 18/

70. No. ORSV/112: José Vicente Burgos, age 64, residing in the Department of San Vicente. According to a report by the armed forces, the victim was shot during an attack by FMLN on the mayor's office and Civil Defence Headquarters in the village of Apastepeque. Burgos died as a result of the attack, as did a soldier on guard duty outside the Civil Defence Headquarters. ONUSAL investigated the incident and interviewed local FMLN leaders, who admitted to having carried out the attack. ONUSAL pointed out to FMLN that such actions involve a considerable element of risk for civilians, and urged it to take steps to avoid the indiscriminate use of force.

71. This case calls for the same comments on indiscriminate attacks as were made in paragraph 69. A further appeal should therefore be made to the parties, and in this case to FMLN in particular, to refrain from attacks which may strike military objectives and civilians or civilian objects without distinction.

72. No. ORSV/31: Pedro N., residing in the Department of San Vicente. The victim was wounded by fragments and had to have part of his left leg amputated

after he stepped on a mine which, according to the armed forces' report, was laid by FMLN. ONUSAL found FMLN forces to be present in the area.

73. No. SORC/27: María N., age 57, residing in the Department of Chalatenango. According to her complaint, on 3 September she was wounded by a bullet fired by FMLN during a clash between insurgents and the army. ONUSAL forwarded the complaint to FMLN, which confirmed that the clash had taken place but did not admit responsibility for the injuries caused to the victim, claiming instead that the armed forces were responsible. This opinion was repeated by the FMLN Political and Diplomatic Commission. María N. was undoubtedly wounded in cross-fire but, so far, ONUSAL has not been able to determine the origin of the projectile which caused the injuries.

74. In the two preceding cases (ORSV/31 and SORC/27), although the allegations point to FMLN, it has not been possible to determine its responsibility for the events. As far as laying mines is concerned, it must be noted that this is a practice in which both contending parties engage. It has been rightly argued that limiting the use of this kind of weaponry in internal armed conflicts is based on the rules of international customary law applicable to such conflicts and on the principle of humanity which must prevail in cases not covered by the law in force, in accordance with the fourth preambular paragraph of Protocol II. Clearly, the verification of incidents of this kind is a particularly complex matter from the standpoint of attributing responsibility. In this connection, the Mission appeals to both parties to refrain from laying mines which may harm the civilian population or individual civilians and, where appropriate, to take all necessary steps to remove them.

(b) Acts or threats of violence

75. No. ORSM/14: Maria N., residing in the Department of San Miguel, reported having received a letter from FMLN on 11 August in which she was warned to leave the area and told that she could return after four months only "if her attitude changed". ONUSAL communicated with FMLN, whose Political and Diplomatic Commission said that it had no information on that case but would investigate it. It added that, in general, FMLN expels from conflict zones individuals who are part of the information networks of the armed forces.

76. No. SORU/33: Pedro N., age 52, residing in the Department of Usulután. According to the report, the complainant had to leave his place of residence in 1989, after being threatened by FMLN. He has been unable to return since then and claims that the threats are still in effect. ONUSAL referred the report to FMLN, which replied that the complainant was not allowed to return because he had deserted from the insurgent forces and turned his weapons over to the army. The FMLN Political and Diplomatic Commission confirmed this information and said that Mr. N. had been expelled in 1989 because he was an informer for the Atonal Battalion.

77. No. SORC/20: Maria N., residing in the Department of Chalatenango. She claims that FMLN has been warning her to leave her place of residence since

her son deserted from insurgent forces. ONUSAL referred the complaint to the local FMLN command, which acknowledged having spoken to "the mother of the deserter" but denied having threatened her.

78. No. ORSM/78: Pedro, Pablo, Juan and José N., residing in the Department of San Miguel. All four are civil servants employed by the Comisión Nacional de Restauración de Areas (National Area Restoration Commission). According to the complaint, the four were detained on 2 September by members of FMLN as they were travelling for work purposes on a busy main road in the western part of the country. They were questioned, and released hours later. The guerrillas burned the vehicle in which the complainants were travelling and threatened them with possible action by FMLN urban commandos. ONUSAL transmitted the report to the local FMLN command, which acknowledged the facts but not the alleged threats. The FMLN Political and Diplomatic Commission informed ONUSAL that no government employee may enter conflict zones because government activities are not permitted there.

79. No. SORC/52: Members of various communities. The complainants, who belong to five communities in the Department of Chalatenango, accused FMLN of pressuring them to join cooperative associations. According to the complaint, they were threatened that if they did not comply, their land would be mined by the guerrillas. ONUSAL consulted FMLN as to the veracity of these allegations. The local FMLN command acknowledged having threatened to lay mines in order to prevent the indiscriminate felling of woodland and only as a way of advising people to organize; however, it claimed it had not actually intended to carry out the threats. The FMLN Political and Diplomatic Commission informed ONUSAL that it was not its policy to intimidate the civilian population into joining associations.

80. No. SORC/30: Pedro N., residing in the Department of Chalatenango, reported that FMLN had attempted to kidnap him on 17 September for having violated the order prohibiting the sale of alcoholic beverages. He claimed that his wife had also been threatened and that, like him, she had had to leave her place of residence. The FMLN Political and Diplomatic Commission reported that, at the request of the population of conflict zones, FMLN does not permit the production or sale of alcoholic beverages. It added that it does not make arrests or threats for such activities, but does carry out seizures and urge the population not to engage in such activities.

81. Nos. SORU/14, 15, 26 and 46: Relatives of soldiers of the armed forces, residing in various localities in the Department of Usulután. According to the complainants, they are being warned to leave their places of residence if their sons do not desert from the armed forces, usually within a fixed period of time. ONUSAL transmitted the reports to the respective local FMLN commands, which denied resorting to such methods. The FMLN Political and Diplomatic Commission acknowledged that meetings held with the population of different cantons at which FMLN asks parents to advise their sons to abandon the armed forces. However, it says that no threats are made at such meetings and that no fixed time-limits are set for following such advice. Moreover, the Commission claims that it has not taken reprisals against the relatives of soldiers who remain in the armed forces.

82. Nos. ORSM/25, 27, 28 and 29: Pedro, Pablo, Juan and José N., residing in the Department of San Miguel. The complainants are members of a municipal council. According to the complaint, on 18 August, they were warned to leave the area or face arrest. FMLN confirmed the truth of the complaint and justified its action on the grounds that the complainants were carrying out municipal activities in zones controlled by the insurgents.

83. The cases mentioned in paragraphs 75 to 82 involve different situations. When FMLN charges that certain persons have acted as informers for the armed forces (paras. 75 and 76), it seems clear that the fundamental guarantees that under Protocol II (art. 6) must govern penal prosecutions are not being observed. The complaints of threats against relatives of soldiers of the armed forces (para. 81) are particularly significant. Of course, FMLN puts a different construction on the facts than do those making the allegations, but the Mission realizes that it is difficult for those affected not to feel really terrified by such practices. In the cases mentioned in paragraphs 78 and 82, it was charged that government employees had been threatened for trying to do their job in certain areas. FMLN says that State activities are not allowed in the territories which it claims to control and that it is responsible for establishing rules and authorities in those areas. FMLN has also said that it does not prevent mayors or councillors from living in those areas, although it does not tolerate their carrying out their activities there. ONUSAL understands that the functioning of mayor's offices and other State institutions in conflict zones is an issue that has been raised at the negotiating table. However, it believes that there is no justification for threatening the right to integrity and security of person.

84. Nos. ORSM 175, 176, 177, 178, 179: Various inhabitants of the same canton. The complainants, who reside in the Department of La Unión, claim that at 10.30 p.m. on 4 September, members of FMLN came to the canton where they live, asking for money. ONUSAL received the complaint during a field visit and relayed it to FMLN.

85. No. ORSM 165: Pedro, Pablo, Juan, José N. and others. The complainants, who reside in the Department of San Miguel, claim that for a number of years they have been forced to collaborate with FMLN in different ways. ONUSAL conveyed the complaints to FMLN, which has undertaken to investigate them.

86. Nos. ORSM 111, 112, 113 and 114: Various residents. According to a complaint submitted by the armed forces, these residents of the Department of Morazán received letters from FMLN asking them to pay the so-called "war tax". FMLN acknowledged the authenticity of the letters, which, according to its local command, are sent only to wealthy individuals and are never accompanied by threats. The Mission's investigation revealed that a number of residents of the place from which the complaint originated have been paying the "war tax" for years. Many local people were afraid to talk to ONUSAL. Since the Mission's investigation, the complainants have not been asked to collaborate further.

87. Nos. ORSM 12, 34 and 110: María, Pedro and Pablo N. The complainants, who reside in the Department of San Miguel, received letters from FMLN asking them for between 20,000 and 25,000 colones and, in two other cases, setting a deadline for payment. Concerning the first complaint, the Political and Diplomatic Commission of FMLN informed ONUSAL that the name signed on the letter was that of a local FMLN commander and that it would therefore continue to investigate the complaint. FMLN denied all responsibility for the events alleged in the second complaint. As for the third complaint, the Political and Diplomatic Commission told ONUSAL that it had doubts as to the authenticity of the letter.

88. The Mission has received numerous complaints about the so-called "war tax" similar to those described in paragraphs 84 to 87. On several occasions, its action has helped put an end to such demands. In other cases, FMLN has denied all involvement. Many people agree to such enforced collaboration or "war taxes" for fear of reprisals such as the destruction of crops or other property. When ONUSAL brought these cases up with FMLN, FMLN claimed that, as one of the parties to the conflict, it had a right to finance its military operations. It also said that some people contribute voluntarily and others do so under pressure. It is not the Mission's responsibility to weigh such political arguments, but it does feel bound to reiterate that the use of methods which could constitute threats of violence against the security and integrity of persons is inadmissible.

89. The Mission is concerned at the magnitude of some actions attributed to FMLN, involving attacks and sabotage against the national electrical system, which although not covered by the Mission's verification mandate warrant a mention in this report. Such actions are not prohibited as methods of combat under the rules of international humanitarian law applicable to internal armed conflicts. However, it must be borne in mind that they could affect the exercise of certain rights by broad sectors of the civilian population, for instance, with respect to the provision of medical care in the country's hospitals and access to workplaces and schools.

90. In this context, the Mission also considers it necessary to reiterate its concern at the effects which military action by either side, in conflict zones and urban areas alike, may have on the human rights of the civilian population. It therefore reiterates its appeal to both parties to bring their conduct into line with the norms of international humanitarian law in force in El Salvador.

## IV. SITUATIONS AFFECTING HUMAN RIGHTS

### A. Right to personal liberty

91. During the period covered by this report, the Mission has observed the situation of personal liberty in El Salvador, has compiled information and has received reports and individual communications, from both affected persons and human rights organizations, concerning acts by State organs which allegedly

violate the right to personal liberty. Many of these reports have been verified, and several cases have been satisfactorily resolved through the intervention of ONUSAL, the governmental Human Rights Commission and non-governmental organizations, with the due cooperation of the authorities.

92. According to the reports and information received by the Mission, most arrests share the same characteristics in different regions of the country. For this reason, instead of analysing individual cases, this section will mention some aspects which seem to warrant immediate corrective measures with a view to enhancing compliance with the rules of law and with the Armed Forces General Staff instructions entitled "Standard operating procedure concerning investigation priorities, arrests and the rights of detainees", issued on 31 July 1990 with a view to giving effect to the relevant undertakings contained in the San José Agreement.

93. It should be borne in mind that, in El Salvador, the security forces - the National Police, the National Guard and the Treasury Police - are auxiliary organs of the administration of justice and, like the armed forces, are currently under the authority of the Ministry of Defence and Public Safety, rather than the Ministry of the Interior or the judiciary.

94. Based on the cases reported to and verified by the Mission, it can be affirmed that military units usually arrest people without handing them over immediately to the security forces, as prescribed by law. These military units are legally authorized to make arrests only in cases of _in flagrante delicto_, and then solely for the purpose of handing over detainees to an auxiliary organ of the administration of justice. The Mission has heard of cases of detainees being held for several days in military units where procedures appropriate to an auxiliary organ have been carried out.

95. Moreover, when persons detained by military units are handed over to a unit of the security forces, the latter considers itself entitled to make use of the full 72-hour period prescribed for administrative detention. In such cases, the security forces usually do not take into account the time which the person has spent in military units, so that the legal detention period is unduly prolonged.

96. This situation has also been noted in cases where the security forces have proceeded to make arrests directly. There have been a number of situations in which detainees have been held beyond the 72-hour period prescribed by law. The situation of children under 16 - the minimum age for criminal responsibility - is particularly important. Such children should be transferred immediately to juvenile protection centres, which does not always happen, rather than stay in a security or military unit.

97. Accordingly, it is important to mention the need to reiterate the instructions given to security forces and military units in order to give effect to the San José Agreement, the rules governing arrests and detention and the instructions referred to above.

## B. Personal documentation

98. A considerable number of returnees and internally displaced persons in El Salvador and, more generally, many inhabitants of conflict zones have no personal identity or civil status documents. This problem was serious enough to warrant a specific mention in the San José Agreement (paras. 7 and 8). The right to personal identity documents is recognized by the Constitution of the Republic (art. 5) and is implicit in various international instruments. 19/ Personal identity documents are also necessary for the effective exercise of certain civil, political, economic, social and cultural rights. In El Salvador, the lack of personal documentation also seems to be closely linked to the problems of freedom of movement and military recruitment, which are dealt with in other sections of this report, and access to employment.

99. The situation of undocumented persons is largely a result of the armed conflict which has been raging for over a decade, at the outbreak of which sectors of the civilian population who had been the target of attacks and threats of violence left El Salvador, for the most part seeking refuge in various countries of the region. This phenomenon combined with that of large numbers of internally displaced persons who, for similar reasons, left their places of origin or residence, out of justified fear of persecution or because of serious situations of universal danger, and moved to other parts of the national territory.

100. Throughout the conflict, many mayor's offices were damaged or destroyed; in numerous cases, this meant that records both of civil status and of identity documents were also damaged or destroyed. Many mayors also left their towns for reasons related to the conflict and settled elsewhere; since they sometimes took the municipal archives with them, this too created difficulties for the personal documentation process. All of this caused particularly serious problems in the Departments of Chalatenango, Morazán and Usulután and also in San Miguel, La Unión, Cabañas and Cuscatlán.

101. In the mid-1970s, the Central Board of Elections at San Salvador began to put many municipalities' records of civil status and personal identity cards on microfilm. However, not all mayor's offices sent in the corresponding archives in time for them to be copied before they were destroyed. The existence of this data bank in the capital city does little to solve the problem of undocumented persons, since it is incomplete and difficult for most interested parties to consult and because the Board does not have the necessary resources.

102. The problem of documentation for returnees became acute when mass repatriation began in 1987. Of course, the difficulties were greater in the case of totally undocumented persons, in other words, people without birth certificates, personal identity cards or any other kind of identity documents. When there is no record of a person's birth and that person has no personal identity papers of any kind, recourse must be had to a legal procedure which is, in most cases, slow, complicated and costly.

103. According to information from the office of the United Nations High Commissioner for Refugees (UNHCR), over 30,000 Salvadorian refugees in various countries have so far returned to El Salvador, either individually or in large groups. There are still no definite figures on the number of such returnees who currently lack some or all of the necessary documents, although various returnee communities and social welfare organizations are conducting a census to determine the magnitude of the problem. It must be emphasized, however, that situations vary considerably. There are settlements where the documentation process is well under way and others where it is far behind schedule. Overall, it is claimed that only 15 per cent of returnees are documented. 20/ Because they are more dispersed and less organized, the number of internally displaced persons who lack some or all of the necessary documents is even more difficult to determine. At some points, it has been estimated that as many as 400,000 people are in this situation. 21/ It is claimed that nearly 50 per cent of internally displaced persons may be without some or all of the necessary documents.

104. The lack of documentation affects both the security and the liberty of persons, particularly their freedom of movement. Because of the armed conflict, the lack of personal documentation can also place at a disadvantage young people who are subject to recruitment by the armed forces. All of this explains why UNHCR has included the matter of personal documentation in its activities to protect returnees.

105. Faced with this situation, the Government, international organizations such as UNHCR, various churches and numerous national and international non-governmental organizations, including organizations of the actual communities concerned, have taken the initiative of drafting bills relating specifically to the civil status of people who are undocumented because of the armed conflict. So far, none of these bills has been considered formally by the Legislative Assembly.

106. The Mission believes that an urgent solution must be found to this priority issue of undocumented persons, using simple, free and flexible methods based on the principles of equality before the law and non-discrimination. 22/ Although in some regions there has been increased cooperation from mayors, apparently prompted in part by the establishment of ONUSAL, this is not enough. There is broad agreement among most of the sectors involved that the adoption of a special provisional law would be an appropriate response to this situation. However, until this happens, practical progress can be made if greater efforts are made to apply the existing legislation more effectively. In this connection, it would be useful if governmental authorities were to give mayors clear, uniform instructions on how to expedite the civil registration process. The Mission believes that this could be done more or less immediately, even before a special law was enacted and without prejudice to the provisions of such a law once it entered into force. As a practical step, the Government could arrange immediately with the Central Board of Elections for the Board to provide a copy of the microfilmed archives to mayor's offices which have lost their records. This would assist them in registering people's civil status and in issuing identity documents as required by law.

## C. Problems of military recruitment

107. In El Salvador, as in many other countries, there is compulsory military service. Such service is established by the Constitution (art. 215) for all Salvadorians from 18 to 30 years of age. The Constitution also establishes that in case of need, "all Salvadorians capable of performing military service shall be soldiers" and that a special law shall regulate the matter.

108. A constitutional norm such as the one mentioned above establishes what is known in law as a "public duty" which the State may impose on citizens in order to perform its essential functions. The fundamental basis of "public duty" is equality before the law. One problem in El Salvador is that the special law which article 215 of the Constitution says shall regulate the manner in which performance of the "public duty" of military recruitment is to be required has yet to be adopted.

109. However, the Ministry of Defence and Public Safety issued regulations governing the procedures for military recruitment. In the absence of a special law, we must assume that these provisions provide a normative framework which the military authorities should, in theory, apply in recruiting citizens for compulsory military service.

110. We raise the issue of recruitment in this report because it can be carried out in a manner detrimental to individual rights enshrined in the Constitution and in the international instruments ratified by El Salvador, which form part of its domestic legislation. 23/ Such rights include, primarily, the right to integrity and security of person, the right to personal liberty and the right to due process of law, all of which are especially protected by the San José Agreement (para. 11).

111. The actual text of the instructions regulating military recruitment procedures 24/ seems to acknowledge that a recruitment practice has existed in the country which may often be at variance with individual rights and guarantees. Although the regulations attempt to remedy this situation, they suffer from a significant omission: at no point do they envisage a procedure for calling up people required to perform compulsory military service. They do stipulate, however, that local commanders must keep a record of young people fit for military service, a rule which never seems to be observed. In fact, the instructions attempt to moderate a procedure which can resemble an arrest. According to various accounts, when recruitment is carried out, the written order from the commander of the region, zone or territorial area mentioned in the regulations is almost never shown. According to a number of complaints, local commanders never obey the instruction that, once recruited, the future soldier's relatives must be informed of his whereabouts as soon as possible. The rules stipulate that the list of young men recruited in each commander's area must be displayed in the most prominent place in the command building, for the information of relatives. This rule too is generally disregarded.

112. Recruitment is generally carried out when buses travelling between departments are searched by military reserve units. Such procedures are also fairly common on local roads, in rural areas and on sports fields in rural areas and are frequent in marginal areas and the outlying districts of the country's main cities. This seems to suggest that people affected by recruitment belong primarily to the most disadvantaged social sectors, although the regulations stipulate that recruitment must be carried out impartially, in keeping with the principle of equality before the law.

113. The relatives of recruits go regularly to military units to claim exemption from compulsory military service on a number of grounds, which frequently include the fact that the recruit is a minor, that he is currently a student, that he is the father of a family, that he is employed at a given place of work or that he is in poor health. According to information provided to ONUSAL by the Military Training Centre (CEMFA, La Unión), some 35 per cent of recruits are exempted each year on the above grounds.

114. ONUSAL has contacted the military authorities concerning various cases of recruitment. On a number of occasions, the interest shown by the Mission to these authorities favourably influenced the outcome of situations where recruitment appeared to have been arbitrary or unreasonable. The fact that it has met with a receptive response when it has drawn attention to irregularities is no doubt a positive step towards improving the present situation.

115. The continuing armed conflict in El Salvador means that the Mission must also examine the information available on FMLN recruitment practices and compare these with applicable norms, particularly the norms of Protocol II. 25/

116. With regard to recruitment by FMLN, few complaints have been made directly to ONUSAL. The Mission has referred to local commanders a number of cases brought to its attention, but without any results so far. It will therefore continue to give priority to this issue. However, on their repeated visits to the field in performance of their mandate, ONUSAL observers have been able to confirm that the guerrilla ranks clearly include children under the age of 15, in violation of the provisions of Protocol II (art. 4.3 (c)) on the protection of children, which apply to all contending parties in an internal armed conflict. International humanitarian law prohibits not only the recruitment of children under 15 but also their direct participation in hostilities. This amounts to an all-out ban on the voluntary enlistment of children under the age of 15. In this connection, it should be pointed out that the participation of minors in such military operations as gathering information, transmitting orders, transporting ammunition and foodstuffs and engaging in sabotage is also covered by the prohibition in article 4.3 (c) of Protocol II. 26/

117. The Mission raised its concerns in this regard directly with the Political and Diplomatic Commission of FMLN and with local FMLN commanders. The explanations given referred to the historical context in which such recruitment has taken place and the fact that it is always voluntary.

However, since such recruitment violates peremptory rules of international humanitarian law, which FMLN has moreover undertaken to respect, 27/ such explanations clearly do not alter the Mission's position that this practice must be abolished immediately. At their most recent meetings with ONUSAL, FMLN leaders have pledged to discontinue the recruitment of children under the age of 15. They have also pledged that children under 15 who are already in their ranks will not take part in hostilities in the future and will be assigned other tasks. The Mission hopes that this pledge will be honoured throughout the country and views it as an encouraging sign, provided that the tasks assigned to such minors are in keeping with the requirements of international humanitarian law.

118. Since military recruitment does not end when an armed conflict is over, the enactment in the context of the political agreements currently under negotiation of the special law regulating compulsory military service as provided for in the Constitution would make an important contribution to safeguarding the peace in future.

119. Pending adoption of the special law provided for in the Constitution, practical measures could be taken which would result in immediate improvements with regard to the problems raised by recruitment. Such measures could include widely publicizing the Ministry of Defence regulations on military recruitment procedures and the granting of exemptions from compulsory military service. The military authorities could also transmit systematically to the Detainee Information Department of the Supreme Court of Justice the lists of people recruited for compulsory military service; this would be of great help for notifying relatives of such recruitment.

120. As long as the conflict continues, the parties, particularly FMLN, should strictly observe the rules of international humanitarian law concerning the recruitment of minors and their participation in hostilities and, as indicated above, should put an immediate end to any practice which might violate those rules.

## D. Due process of law

121. The full enjoyment of the right to due process of law is inseparably linked to the existence of a strong and effective judicial system which meets the criteria of complete independence, objectivity and impartiality. In the case of El Salvador, the need for and the timeliness of a far-reaching reform of the judicial system have been noted by a wide variety of sectors which have concerned themselves with the complex problems raised by the administration of justice.

122. In that direction, some legal reform initiatives have been taken by the executive branch on the basis of the work of the Commission to Amend Salvadorian Legislation, which was established to propose urgent legislative reforms for improving the criminal justice system. The Supreme Court of Justice has also expressed interest in promoting various reforms of the

judicial system and, in the area of criminal justice, has continued a number of programmes relating thereto. 28/

123. The Inter-party Commission comprising all the parties represented in the Legislative Assembly has, in the course of its work, drawn attention to numerous shortcomings in the functioning of the administration of justice and has discussed possible reform initiatives to correct them. A number of academic publications have also analysed this problem, with a view to proposing an improvement in the judicial system from both the normative and the institutional standpoints. In short, it can be said with certainty that a broad consensus has emerged in Salvadorian society concerning the need for a far-reaching reform of the judicial system, its auxiliary organs and the Public Prosecutor's Office.

124. One particularly significant step in that direction has been taken as part of the negotiating process under way between the Government of El Salvador and FMLN. The item has been on the agenda of the negotiations ever since they were launched, in accordance with the Geneva Agreement of 4 April 1990, and it was developed in the Mexico Agreements of 27 April 1991. Moreover, the constitutional reforms providing for a number of changes in the judiciary and in the Public Prosecutor's Office will enter into force on 30 November 1991.

125. These innovations include the reorganization of the Supreme Court of Justice and a new procedure for the election of Supreme Court judges; an allocation from the State budget to the judiciary amounting to no less than 6 per cent of income; and a series of reforms of the Public Prosecutor's Office, including the creation of the post of National Counsel for the Defence of Human Rights. Agreement was also reached on major initiatives, to be put into effect through secondary legislation, relating to the Judicial Training School, the career judicial service and the National Council of the Judiciary, so that the composition of the judiciary will be such as to guarantee its independence from the organs of State and from political parties.

126. Clearly, progress in the effective enjoyment of all the rights included under due process of law is closely linked to the fulfilment and development of the above-mentioned agreements and to the implementation of the reforms already adopted. However, that does not preclude the Mission from examining, pursuant to the mandate conferred on it by the San José Agreement, certain judicial cases in particular in which respect for the fundamental rules which make up the right to due process of law is at stake.

127. In the period covered by this report, verdicts were reached by the juries in the case of the Jesuit priests, which attracted considerable national and international attention and came to symbolize the situation of human rights in El Salvador, and in two other cases which were also closely followed by domestic public opinion: the trial for the murders of seven people between 1981 and 1983 in the village of Armenia in Sonsonate Department 29/ and the trial for the murder on 26 October 1987 of the then coordinator of the non-governmental Human Rights Commission of El Salvador, Herbert Anaya Sanabria.

128. In the Jesuit case, the jury reached a verdict on 28 September, convicting two of the soldiers on trial and acquitting the remaining seven, as will be described later. In the second case, on 9 October a jury acquitted 13 members of the civil defence forces accused of having killed seven people at Armenia and having thrown their bodies into a pit. Lastly, on 12 October another jury found the accused, Jorge Alberto Miranda Arévalo, a self-confessed member of FMLN, guilty of the murder of Mr. Anaya.

129. This section will comment on the public hearing in the Jesuit case, which two members of ONUSAL attended as observers. 30/ The commentary will be confined to the public hearing, a stage of this famous case which falls within the Mission's mandate and which the Mission was able to observe. Subsequent reports will deal with aspects of the trial of the two other cases, which are currently being analysed, in the part corresponding to the Mission's mandate.

130. On 28 September 1991, a jury of five citizens convicted two of the nine soldiers on trial for the murder of six Jesuit priests, their housekeeper and her daughter, committed in the early hours of 16 November 1989 on the campus of José Simeón Cañas Central American University in San Salvador. Colonel Guillermo Alfredo Benavides Moreno, the then Director of the Military College, was found guilty of the murder of the eight victims, who included the Rector, Father Ignacio Ellacuría, and four other professors of the Central American University. Lieutenant Yusshy René Mendoza Vallecillos, Colonel Benavides' assistant, was found guilty of the murder of Celina Ramos, the young daughter of the priests' housekeeper, who died that night with her mother. The seven other soldiers, all of them members of the Atlacatl Infantry Battalion, including one soldier who was not present, were acquitted of the eight murders of which they had been accused. None of the accused was found guilty of the charges of acts of terrorism or acts preparatory to terrorism, for which they were also on trial.

131. When he comes to pass sentence, the presiding judge will have to base his decision on the jury's verdict, since he is not allowed to weigh the evidence given regarding the corpus delicti and criminal responsibility. He will be able to weigh only the evidence relating to mitigating or aggravating circumstances. Under El Salvador's Penal Code, the maximum penalty for murder is 30 years' imprisonment. The judge will also have to rule on unlawful acts not referred to the jury: instigation and conspiracy to commit the crime of terrorism, of which four officers are accused, and actual complicity, of which two officers are accused. Lastly, he will have to rule on the civil action brought by the private complainant against the accused and, subsidiarily, against the Salvadorian State. Three members of the Atlacatl Battalion are also on trial separately for perjury.

132. By law, the Judge of the Fourth Criminal Court who conducted the pre-trial proceedings and directed the trial should have passed sentence within 30 days following the public hearing. That period was extended so that the judge could pass a single sentence on all the crimes - those considered by the jury and those considered by him - and on the civil action. However, on 31 October, the defence filed an application challenging the judge, which had the effect of suspending the proceeding.

133. To give a measure of the significance of the trial in the Jesuit case, it must be pointed out that it is without precedent in the functioning of the administration of justice in El Salvador. This is the first time that a public hearing has ended with a jury convicting a high-ranking officer of crimes which constitute serious violations of the human rights of civilians. As a result, even with the reservations voiced below concerning the public hearing that the Mission observed, this case reflects progress towards the affirmation of the validity of human rights that is one of the main goals of criminal justice today, in its function both of preventing unlawful conduct and of protecting the rights of the accused and the victim.

134. The public hearing was held in a room provided by the Supreme Court and specially adapted for security reasons, with the jury hidden from view of the parties and the public. It lasted three days and was broadcast in its entirety on a State television channel. The hearing began with the reading of the summary, which must contain the main trial proceedings. By law, the summary must present the case as clearly as possible so that members of the jury can form an exact opinion of the substance. The reading lasted 15 hours and was full of repetitions. Because of the system followed, each extrajudicial statement was repeated twice: the extrajudicial statement was read out first, then the two judicial statements of the individuals who witnessed it. Extrajudicial statements are, moreover, taken down as one continuous statement, without any indication of the questions asked. The same is true of judicial statements, which reproduce in indirect speech the extrajudicial statements witnessed. On the other hand, the summary did not include essential evidence such as the judicial statements by which the accused retracted their extrajudicial statements made to an auxiliary organ, the Criminal Investigation Commission, which was involved in the pre-trial proceedings. Throughout the first day, the jury had to listen to the facts in a dossier which currently comprises some 5,000 pages.

135. When the reading of the summary ended, members of the jury refrained from exercising their legal power to cross-examine the accused, who were present at the hearing, or witnesses or experts who had already been examined. As a result, once the summary had been read out, the final discussion began, in the form of two rounds of debate lasting 16 hours in which the private complainant, the Office of the Attorney General of the Republic and the counsel for the defence each argued their case in turn. In the course of the debates, evidence was frequently cited that had not been included in the summary, for instance, statements by Major Eric Warren Buckland, a United States military adviser, who in the pre-trial stage had transmitted information which had come to his knowledge and could help shed light on the case. The validity of other evidence brought by the prosecution, such as the opinions of handwriting experts, was seriously questioned.

136. After the debates ended, a list of 80 questions was handed over to the presiding judge. After deliberating for five and a half hours, the jury reached its verdict.

137. The first comment that must be made is that during the reading of the summary the court gave members of the jury absolutely no guidance or instructions to help them understand the list of evidence in the case or weigh evidence which had sometimes been seriously contested and, in general, to prepare them for their functions in accordance with principles which, as Salvadorian law expressly states, are widely accepted by contemporary doctrine in the area of penal procedure. 31/

138. According to the Code of Penal Procedure currently in force in El Salvador, the oral and public hearing is not the main proceeding in which the most important part of the examination of evidence takes place. The jury can pronounce a verdict, and in fact did do so in this case, without having been present when the accused made their statements and the witnesses were examined, proceedings which take place before the presiding judge both in the pre-trial stage conducted by him and in the adversary stage or trial proper, when evidence can be brought at the proposal of the parties. This is clearly a major obstacle to ensuring that a jury of laymen is in a position to reach a verdict which meets the requirement of objectivity, which is closely linked to that of the impartiality of justice. 32/

139. Another major difficulty of the penal procedural system currently in force in El Salvador is that the model adopted is that of the so-called "pure jury", in which a jury has exclusive powers to pass judgement on the facts proved in the case, on the basis of the system of "intimate conviction". This system does not lay down rules for juries from which to deduce whether a piece of evidence is sufficient; instead, it tells them that they must weigh in their conscience the evidence brought for and against the accused (Code of Penal Procedure of El Salvador, art. 363). With such a system, in order for members of the jury to arrive at a correct conclusion, it is essential that they have been present when the accused made their statements and also when the witnesses made the statements required of them either officially or at the proposal of a party, and when the main evidence for and against the accused was presented. 33/

140. Because of the above, it is very difficult to analyse whether the verdict was reasonable. The question is a valid one since, after observing the public hearing, various aspects of the jury's verdict seem problematic. In particular, it is difficult to understand why Lieutenant Yusshy René Mendoza Vallecillos was found guilty only of the death of a minor who died in her mother's arms as a result of the same shots that killed her mother, as all the evidence mentioned in the public hearing seems to indicate. It is also surprising that the jury should have convicted those who were indirectly responsible for the murders, namely, Colonel Benavides Moreno and Lieutenant Mendoza Vallecillos of the Military College, while acquitting those on trial as the alleged immediate or direct authors of the crimes under investigation, all of them members of the Atlacatl Infantry Battalion. It is not possible to infer whether the jury acquitted the latter group of accused because it felt there was not sufficient evidence of criminal responsibility to convict them of the crimes in question, because it felt they could not be held guilty because they had simply been obeying orders. In the latter case, there would be a conflict with the rule

that this excuse cannot be invoked as grounds for acquittal when the order given was manifestly illegal (El Salvador Penal Code, art. 40).

141. The holding of the public hearing marked the end of the adversary stage of this trial, which is unprecedented in the country's history. Its broadcast on television may have emphasized its educational importance for society as a whole. Any criminal case is a violent and, on occasions, extremely painful social conflict for all the parties concerned. In a State governed by the rule of law, such a conflict can be resolved by only one institution: an independent, objective and impartial judiciary. This trial, and the public hearing in particular, once again demonstrated the need to give careful thought to improving the judicial system, particularly the criminal justice system, in El Salvador.

142. Of course, this issue goes beyond criticisms limited to the functioning of a given system of trial by jury as outlined here. What is needed is an overall analysis of the administration of justice as indicated at the beginning of this section. In fact, the Minister of Justice, René Hernandez Valiente, admitted in statements he made on television on 15 October that the country's trial system has serious shortcomings and that the verdicts of the recent juries had therefore come under criticism from several quarters. He said that the cause of the problem might be not so much the jury as the trial system itself, which must be revised and made much more reliable for a jury. Enhancing both the judicial protection of human rights and respect for the rules of due process are objectives which the San José Agreement assigns to ONUSAL and which are among its priority activities (paras. 11 and 14 (h)). Hopefully, progress towards peace will help create the necessary environment for a reform of penal procedures, which, as we have already said, is clearly a very complex task. The difficulty of the challenges raised by this undertaking stems largely from the fact that in addition to the necessary normative and institutional reform, which must be appropriate to a country's specific characteristics and situation, renewal of the system of criminal justice also requires a profound change in the legal and political culture of society at large. The Mission would like to be able to contribute to this undertaking to the best of its ability, within the strict limits imposed by its mandate.

## E. Freedom of expression

143. In connection with freedom of thought, expression and opinion, the Mission considers that, despite the situation of armed conflict in El Salvador, the mass media express a multiplicity of viewpoints. These include a diversity of opinions among sectors critical of the negotiating process and among those who support it. The freedom of expression observed by the Mission enables the population of El Salvador to be informed about all kinds of news and information pertaining to the armed conflict, including the opinions and viewpoints of FMLN commanders and the Government's military authorities, opposition political parties and the country's labour and social sectors.

144. Notwithstanding the above, there are a number of restrictions on the full exercise of those freedoms. There is a lack of legal and constitutional guarantees with regard to the exercise by citizen of the right of correction and response. In addition, cases have been observed in which this fundamental public freedom is abused, to the detriment of human rights. In this context, the Mission is concerned at the fact that individuals and groups use some of the media to anonymously attack and threaten individuals and institutions for clearly political reasons, thereby violating the security and integrity of persons.

### F. Freedom of association

145. The Mission will take up the issue of freedom of association in the near future, since so far it has not received or compiled sufficient information on the situation of that right in El Salvador.

## V. CONCLUSIONS AND RECOMMENDATIONS

146. While the purpose of the first report was to establish a legal and political framework for the verification of human rights in El Salvador before the cessation of the armed conflict, the second report presents a more precise analysis of the situation, based on the study of cases related to human rights and of situations, related or otherwise to the conflict, which because of their impact on human rights deserve special consideration and could justify some preliminary recommendations.

147. Once the preparatory phase of its activities was concluded, ONUSAL began in October to investigate cases and situations arising since the beginning of the Mission and to follow them up with State institutions. With FMLN, it has also verified the measures taken to avoid certain practices that are contrary to the San José Agreement. In fact, the preamble to the Agreement bears in mind that El Salvador's legal system provides for the recognition of human rights and the duty of the State to respect and safeguard them. In paragraph 16 of this report, the Mission referred expressly to this obligation to provide safeguards. The State has also assumed the obligation to respect and safeguard human rights under many international conventions. FMLN, for its part, as indicated in the preamble to the Agreement, has declared that it has the capacity and the will and assumes the commitment to respect the inherent attributes of the human person. In particular, it must be understood that this declaration includes the rules of international humanitarian law contained in article 3 of the four Geneva Conventions of 12 August 1949 and in the Protocol additional to those Conventions, and relating to the protection of victims of non-international armed conflicts (Protocol II).

148. On the basis of the information received at the Mission's offices, either directly from individual complaints or from organizations responsible for the protection of human rights or State institutions, it can be said that the level of human rights violations is cause for concern, notwithstanding the

real efforts made to improve the situation. While not all difficulties are linked to the armed conflict, the persistence of a very tense situation is not conducive to a spirit of reconciliation, the consolidation of which seems inseparable from the effective exercise of human rights.

Right to life and to integrity and security of person

149. The Mission has been able to confirm that a number of summary executions by unidentified individuals or paramilitary groups have taken place during the period covered by this report. In many of these cases, notwithstanding the seriousness of the events, no special investigation has been made by the security forces or the judiciary. The lack of effective measures for investigating the facts heightens the feeling of insecurity which prevails in El Salvador.

Recommendations

150. ONUSAL recommends that the Government of El Salvador, the Office of the Attorney General of the Republic and the judiciary organ establish the necessary mechanisms to ensure that cases of attacks on the life of persons are systematically investigated, in order to find and punish the perpetrators. In particular, it thinks it would be very useful if account were taken of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions referred to in General Assembly resolution 44/162 of 15 December 1987.

151. Vigorous action should also be taken to put an end to the practices of intimidation and threats by clandestine groups. The immediate disposal of bodies should be avoided in cases of violent death or death in questionable circumstances and an adequate autopsy should be conducted in accordance with the conditions recommended in the Principles mentioned above.

152. Lastly, the authorities should take all possible measures to identify the authors of flyers signed by apparently clandestine organizations and adopt regulations prohibiting the radio or television broadcasting of threatening messages.

153. The Mission considers that it is not yet in a position to make an exhaustive evaluation of the phenomenon of enforced or involuntary disappearances. The complaints received often relate to illegal detentions or recruitment and further study of the problem is needed in order to determine its exact extent. Certain measures would, however, make it possible to avoid a large number of complaints of disappearance, which do not always correspond to an enforced or involuntary disappearance.

Recommendation

154. The authorities should set up simple, flexible mechanisms to enable complainants to ascertain the whereabouts of the person concerned quickly. The Mission recommends, in particular, that the armed forces should

systematically report each detention they carry out to the Detainee Information Department set up by the Supreme Court of Justice.

155. On the issue of torture and cruel, inhuman or degrading treatment or punishment, the Mission will continue to verify this problem carefully, as well as the efforts made by the authorities to eliminate certain existing practices.

Recommendation

156. Scrupulous respect for the legal norms regulating administrative detention, particularly the prohibition on holding a detained person incommunicado established by article 2 (e) of the San José Agreement, should facilitate better supervision of the treatment of detainees by the judiciary. Allowing lawyers to defend detainees during the period of administrative detention, as also envisaged in the same article, would likewise help to avoid practices of torture and cruel, inhuman or degrading treatment or punishment.

Civilian population

157. Concerning the protection of the civilian population, ONUSAL has noted that both parties' troops have made efforts to avoid civilian deaths. Nevertheless, the scale of the armed clashes of recent weeks continues to affect the civilian population.

Recommendations

158. As long as the armed conflict continues, the Mission can only reiterate its recommendation to both parties to take all necessary measures and precautions, as a matter of urgency, to avoid attacks and acts or threats of violence against the civilian population. The Mission also recommends that the parties refrain from actions liable to cause civilian casualties and, in particular, avoid indiscriminate attacks and excessive use of force in military operations.

159. The Mission, stressing once again that its mandate does not give it the power to verify the armed conflict as such, considers that, in exceptional cases, it must take into account the fundamental guarantees of humane treatment for all persons not directly participating, or no longer participating, in hostilities. ONUSAL therefore urges the parties to not only respect all the norms of international humanitarian law but also take all necessary steps to observe the principles of humanity referred to in the fourth preambular paragraph of Protocol II relating to the protection of victims of non-international armed conflicts.

Personal documentation

160. Taking into account the number of complaints received, the importance of the problems raised and the possibility of finding short-term or medium-term solutions, the Mission has devoted particular attention to certain situations

with a view to following them up in the future. Regarding documentation for displaced persons, returnees and people living in conflict zones, articles 7 and 8 of the San José Agreement recognize the right to personal documentation, as does the Constitution of the Republic of El Salvador.

161. The situation of undocumented persons is the direct result of the armed conflict. The large number of internally displaced persons and the massive repatriation that began in 1987 have intensified the problem, creating very difficult situations for the populations concerned, particularly as regards their safety and personal liberty.

162. Although a number of initiatives have been taken by the Government of El Salvador, UNHCR, the churches and some non-governmental organizations concerned with the problem, according to information available to ONUSAL, the draft bill discussed between the Ministry of Interior and UNHCR, on which there seemed to be a broad consensus, has not been submitted to the Legislative Assembly. A provisional law might solve this problem, which is given priority under the San José Agreement.

Recommendations

163. In view of the extent of the problem and its serious consequences for the populations concerned, the Mission recommends that the Government of El Salvador submit an urgent proposal to the Legislative Assembly for the adoption of a special provisional law establishing simple, flexible methods, based on the principles of equality before the law and non-discrimination, for providing proper documentation at no charge to displaced persons, returnees and all persons living in conflict zones.

164. In the short term, even before such a law is adopted, it would be advisable for the Government to step up its efforts to ensure that the existing legislation is applied more effectively, providing mayors with clear, uniform instructions to facilitate civil status registration. It is also suggested that the Central Board of Elections assist the documentation process by making its microfilm archives available.

Military recruitment

165. It has been emphasized that, as in many countries, the Constitution of the Republic establishes compulsory military service. The armed forces, recognizing that recruitment practices may be at variance with individual rights and freedoms, have issued two sets of instructions regulating military recruitment procedures and the granting of exemptions from compulsory military service.

166. The report analyses this effort to regulate military recruitment practices and points to shortcomings in recruitment methods: frequent failure to show the written order from the chief of the military region, to notify the families of recruits, and to post a list of the young men recruited in each commander's area. The military authorities have responded favourably to the

Mission's comments, demonstrating their interest in finding solutions. The basic problem is the absence of a law standardizing the recruitment process and making it known to all Salvadorian citizens.

167. The continuing armed conflict has caused the Mission to also examine recruitment by FMLN. It has been noted that there are a significant number of children under 15 in the ranks of the guerrillas, in violation of the provisions of Protocol II concerning the protection of children. FMLN leaders have pledged to discontinue the recruitment of children under 15 and to assign other tasks to those already recruited.

Recommendations

168. The Mission recommends that the special law regulating compulsory military service provided for in the Constitution of the Republic be enacted as soon as possible. In the meantime, it suggests that the Ministry of Defence regulations on military recruitment procedures and the granting of exemptions from compulsory military service should be given wide publicity.

169. It also recommends that the military authorities find a way of informing relatives that a member of the family has been recruited, using a speedy, flexible mechanism such as systematic notification of relatives through a centralized information department in the General Staff or another institution.

170. Lastly, ONUSAL recommends that FMLN honour its pledge to observe the rules of international humanitarian law concerning the recruitment of minors and reminds it that minors may not take part in any kind of military operations, even if these are not directly linked with the fighting.

Due process of law

171. Due process of law is also a priority for the Mission, which has begun to follow it up by observing a significant verdict recently reached by a jury and by beginning to analyse the day-to-day practice of the courts.

172. The Mission considers it premature, after only three months in El Salvador, to make an overall evaluation of the judicial system and, in particular, of penal procedures. However, it must emphasize the fact that, for the first time, a jury has convicted a high-ranking officer in a case of serious human rights violations.

173. Setting aside the symbolic value attached to the case of the Jesuit priests, despite the shortcomings evident in the public hearing, ONUSAL has been able to infer from this and other trials that certain defects in the pre-trial stage of penal proceedings make it difficult to establish the truth and to try and punish the culprits. The obvious inadequacy of the technical and material means available to the judicial system is a serious obstacle to its proper functioning. The lack of a civilian police force specialized in judicial matters and answerable to a civilian authority responsible for

bringing public action is another major difficulty. The Mission's examination of this trial has demonstrated the need for serious reflection on the criminal justice system, with a view to improving it through the adoption of structural reforms.

174. The problems relating to investigation and penal procedures will be analysed in subsequent reports. In the meantime, the Mission would like to be able to contribute to a positive development, within the strict framework of its mandate.

175. Although the human rights situation in El Salvador is still cause for concern, ONUSAL has observed, throughout the first three months of its presence in the country, an effort by the parties to respect the commitments signed at San José. So far, it has not met with any real difficulties in performing its verification mission, thanks to the cooperation of the parties and of the people of El Salvador in general. However, it regrets that the persistence of the armed conflict remains a real obstacle to the implementation of effective, lasting measures which might significantly improve the human rights situation. Through its work in the field and its constant contacts with the Government and the armed forces, FMLN and human rights organizations, the Mission is trying to contribute to the enormous task of consolidating the rule of law in El Salvador.

## Notes

1/ The Concertación Nacional de Instituciones de Apoyo y Organismos de la Población Refugiada, Repoblada y Desplazada (National Coalition of Support Institutions and Agencies of Refugees and Resettled and Displaced Persons) consists of the following organizations: the Asociación Salvadoreña de Desarrollo Integral (Salvadorian Association for Integrated Development), the Fundación para la Autogestión y Solidaridad de los Trabajadores Salvadoreños (Foundation for the Self-Management and Solidarity of Salvadorian Workers), the Fundación para la Cooperación con Repobladores y Desplazados (Foundation for Cooperation with Resettled and Displaced Persons), the Coordinación Ecuménica de Servicios y Ayuda Humanitaria (Ecumenical Coordinator of Services and Humanitarian Aid), the Fundación Salvadoreña para la construcción y el Desarrollo (Salvadorian Foundation for Construction and Development), the Coordinadora de Repoblaciones Salvadoreñas (Coordinator of Salvadorian Resettlement), the Patronato para el Desarrollo de las Comunidades de El Salvador (Community Development Board of El Salvador), the Comité Cristiano Por Desplazados de El Salvador (Christian Committee for Displaced Persons in El Salvador), the Comité Nacional de Repobladores (National Committee of Resettled Persons) and the Comité de Repobladores de Cabañas y Cuscatlán (Committee of Resettled Persons in Cabañas and Cuscatlán).

2/ See Annual Report of the Inter-American Court of Human Rights, 1988, OAS/Ser.L/V/III.19, doc. 13, 31 August 1988, General Secretariat, Organization of American States, annex VI. Inter-American Court of Human Rights, Velásquez Rodríquez case, judgement of 29 July 1988, especially paragraph 174,

Notes (continued)

in which the Court ruled that "the State has a legal duty to prevent human rights violations to the extent possible and to investigate seriously, by all available means, any violations committed within its jurisdiction in order to identify those responsible, impose appropriate penalties and provide the victim with appropriate compensation". The conventional legal basis of the State's obligation to provide safeguards derives from the International Covenant on Civil and Political Rights (art. 2) and the American Convention on Human Rights (art.1 (1)). Likewise, in his most recent report to the Commission on Human Rights, the Special Rapporteur on summary or arbitrary executions stated: "The Special Rapporteur wishes to reiterate that where a Government's practice fails to meet the standards set forth in the Principles on effective prevention and investigation of extra-legal, arbitrary and summary executions (Economic and Social Council resolution 1989/65 of 24 May 1989), the Special Rapporteur will consider such failure as an indication of that Government's responsibility, even where Government officials are found not to be directly involved in the acts of summary or arbitrary execution" (E/CN.4/1991/36, 4 February 1991, para. 591).

3/ See, in particular, principle 11: "Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims".

4/ See, in particular, principle 18: "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed".

5/ The word "mara" (translated here as "gang") is used in El Salvador to mean a group of delinquents.

6/ See Economic and Social Council resolution 1989/65, annex, principle 9.

7/ Ibid., principle 12.

8/ Ibid., in particular principle 4, which stipulates that "[e]ffective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

Notes (continued)

9/ Ibid., especially principle 1.

10/ See the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in resolution 3452 (XXX) of 9 December 1975, arts. 8, 9 and 10.

11/ See International Committee of the Red Cross (ICRC), Commentaire des Protocoles additionnels du 8 juin 1977 aux Conventions de Genève du 12 août 1949, Martinus Nijhoff Publishers, Geneva, 1986, para. 4749.

12/ See General Assembly resolution 2675 (XXV) of 9 December 1970 on basic principles for the protection of civilian populations in armed conflicts. See also ICRC, Commentaire, op. cit., para. 4772.

13/ See M. Both, K. J. Partsch and W. A. Solf, New Rules for Victims of Armed Conflicts, Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949, Martinus Nuhoff Publishers, The Hague/Boston/London, 1982, p. 675 ff.

14/ See resolution 2675 (XXV), para. 1.

15/ See Protocol II, art. 7.

16/ Ibid., art. 13 (2).

17/ Ibid., art. 6 (2).

18/ See, by analogy, the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 5 (4) and (5).

19/ See Universal Declaration of Human Rights, arts. 6 and 15; International Covenant on Civil and Political Rights, arts. 16 and 24; Convention on the Rights of the Child, arts. 7 and 8; American Convention on Human Rights, arts. 3, 18, 19 and 20.

20/ For example, the following data, provided by the "Segundo Montes" returnee community in Meanguera, Department of Morazán, represent August 1991 estimates: (a) persons under 18 who need a birth certificate: 5,283; (b) persons over 18 who need a birth certificate and a personal identity card: 2,911; (c) persons in group (b) who may have obtained identity cards, but not birth certificates, in return for payment: 100 (estimated). According to estimates by some of the mayors of towns situated north of the Torola river, in the northernmost part of the Department of Morazán, some 50 per cent of children have no birth certificate. This is most often true of children between the ages of 9 and 14. In the Department of Chalatenango, 60 per cent of municipal archives were destroyed during the conflict.

Notes (continued)

21/ See Human Rights Institute of José Simeón Cañas Central American University, El Salvador 1986: En busca de soluciones para los desplazados, San Salvador, 1986, p. 158.

22/ See Constitution of the Republic of El Salvador, art. 3; Universal Declaration of Human Rights, art. 7; International Covenant on Civil and Political Rights, art. 26; American Convention on Human Rights, art. 24.

23/ See San José Agreement, sixth preambular paragraph.

24/ In fact, the first sentence of those regulations says: "Traditionally, the procedure in our country for recruiting young men for military service has been inconsistent with the most elementary standards of respect for the human person".

25/ Art. 4.3 (c) of Protocol II provides that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities".

26/ See ICRC, Commentaire, op. cit., para. 4557.

27/ See San José Agreement, third preambular paragraph.

28/ See Judicial Branch, Supreme Court of Justice, Memoria de Labores, Julio 1990-Junio 1991. Among the specific programmes undertaken by the judiciary in the area of criminal justice during this period were initiatives establishing prison supervision agents, itinerant judges, the Department of Judicial Assessors and the Detainee Information Department.

29/ The Armenia trial was one of five cases selected for special treatment by the then President of the Republic, José Napoleón Duarte, when he took office in 1984. The other cases were the assassination of Monsignor Oscar Arnulfo Romero, Archbishop of San Salvador; the disappearance and murder of United States journalist John Sullivan in December 1980; the murder of two United States labour advisers and one Salvadorian at the Sheraton Hotel in January 1981; and the murder of over 70 peasants near the "Las Hojas" cooperative in San Antonio El Monte, Department of Sonsonate, in February 1983. Only two of those cases went to trial. In the Sheraton Hotel case, two people who were directly responsible were convicted in 1986, but were later released under the 28 October 1987 amnesty. The other case was the Armenia trial.

30/ Members of the diplomatic corps and a considerable number of representatives of national and international non-governmental organizations also attended as observers.

Notes (continued)

31/ See the final report by the Special Rapporteur, Mr. L. M. Singhvi, on the administration of justice and the human rights of detainees: study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. Subcommission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1985/18/Add.5 of 31 July 1985).

32/ See The right to a fair trial, a brief report prepared by Mr. Stanislav Chernichenko and Mr. William Treat in accordance with resolution 1989/27 of the Subcommission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1990/34 of 6 June 1990).

33/ The code of penal procedures currently in effect entered into force in 1974 and has been partially amended, but is basically akin to a written and inquisitorial system, combined with some elements of oral and public procedures. This eliminates many of the advantages which its supporters attribute to trial by jury.

APPENDIX I

Non-governmental organizations for the defence and promotion of human rights in El Salvador

Centro de Estudios para la Aplicación del Derecho (Study Centre for the Application of the Law)

Human Rights Commission of El Salvador (non-governmental)

Comité de Familiares Pro-Libertad de Presos, Desaparecidos Políticos de El Salvador (Committee of Relatives for the Freedom of Political Prisoners and Disappeared Persons in El Salvador)

Comité de Madres de Desaparecidos "Monseñor Oscar Arnulfo Romero" (Monsignor Oscar Arnulfo Romero Committee of Mothers of the Disappeared)

Comité de Madres y Familiares Cristianos Pedro Octavio Ortiz y Hermana Silva (Pedro Octavio Ortiz and Hermana Silva Committee of Christian Mothers and Relatives)

Departamento de Derechos Humanos del Sinodo Luterano Salvadoreño (Human Rights Department of the Salvadorian Lutheran Synod)

Human Rights Institute of Jose Simeón Cañas Central American University

Legal Protection Office of the Archdiocese of San Salvador

Socorro Jurídico Cristiano "Arzobispo Oscar A. Romero" (Archbishop Oscar A. Romero Christian Legal Aid Office)

Legal Aid Office of the Faculty of Law and Social Sciences of the University of El Salvador

## APPENDIX II

Table 1. Complaints received by ONUSAL a/

| Category | August/ September | October | Total |
|---|---|---|---|
| Summary executions | | | |
| Attributed to members or ex-members of the armed forces (a single case involved eight victims) | 16 | 2 | 18 |
| By persons unknown | 6 | 2 | 8 |
| Death threats | | | |
| Attributed to members of the armed forces | 2 | 21 | 23 |
| Attributed to the Salvadorian Anti-Communist Front | 2 | 1 | 3 |
| By persons unknown | 2 | 10 | 12 |
| Enforced or involuntary disappearances | | | |
| Enforced disappearances | 1 | 6 | 7 |
| Disappearances (location unknown) | 7 | 17 | 24 |
| Abductions attributable to FMLN | 10 | 16 | 26 |
| Torture and cruel, inhuman or degrading treatment or punishment | 38 | 31 | 69 |
| Violations of integrity of the person | | | |
| Injuries attributed to the armed forces | 5 | 5 | 10 |
| Acts or threats of violence | 36 | 22 | 58 |
| Violations of personal liberty | | | |
| Illegal or arbitrary detention b/ | 119 | 120 | 239 |
| Restrictions on freedom of movement | 13 | 24 | 37 |
| Violations of due process of law | | | |
| Illegal searches | 18 | 8 | 26 |
| Violations of freedom of association | 1 | 7 | 8 |
| Violations of freedom of expression | - | 1 | 1 |
| Humane treatment | | | |
| Attacks on the life of persons attributed to the armed forces | 3 | 8 | 11 |
| Attacks on the life of persons attributed to FMLN | 3 | 13 | 16 |
| Attacks by persons unknown | - | 1 | 1 |
| Death threats attributed to FMLN | 1 | 13 | 14 |
| Attacks on the civilian population and on individual civilians | | | |
| Attributed to the armed forces | 12 | 30 | 42 |
| Attributed to FMLN | 5 | 5 | 10 |
| By persons unknown | 8 | 5 | 13 |
| Acts or threats of violence the primary purpose of which is to intimidate the civilian population | | | |
| Attributed to the armed forces | 18 | 12 | 30 |
| Attributed to FMLN | 38 | 34 | 72 |

Table 1 (continued)

| Category | August/ September | October | Total |
|---|---|---|---|
| Other situations relating to humane treatment | | | |
| Recruitment by the armed forces (minors) | 11 | 17 | 28 |
| Recruitment by the armed forces (adults eligible for military service) | 57 | 105 | 162 |
| Recruitment by FMLN (minors) | 4 | 14 | 18 |
| Recruitment by FMLN (adults) | - | 2 | 2 |
| Other cases c/ | 56 | 105 | 161 |
| Total | 454 | 626 | 1 080 |

a/ The total or partial figures included refer to complaints received and should not be construed as an affirmation by ONUSAL that the violations actually took place.

b/ This figure includes the 69 cases of torture and cruel, inhuman or degrading treatment or punishment.

c/ The category "Other cases" includes doubtful cases and those not falling within the Mission's verification mandate.

## APPENDIX III

### Statistics from Government sources

Table 1. Complaints received by the Human Rights Commission, 1991

| Category | August | September | Total |
|---|---|---|---|
| Threats | 2 | 4 | 6 |
| Injuries | 4 | 4 | 8 |
| Rapes | 1 | - | 2 |
| Disappearances | 31 | 34 | 65 |
| Arrests | 1 | 4 | 5 |
| Abductions by FMLN | 4 | - | 4 |
| Murders | 3 | 4 | 7 |
| Total | 46 | 50 | 97 |

Source: Human Rights Commission.

Table 2. Deaths and injuries as a result of the violence in El Salvador, 1991 a/

| Category | August | | September | | Total |
|---|---|---|---|---|---|
| | Deaths | Injuries | Deaths | Injuries | |
| Civilian population as a result of terrorist acts | 3 | 24 | 1 | 3 | 31 |
| Civilian population attributed to members of the armed forces b/ | 9 | 88 | 11 | 18 | 126 |
| Civilian population as a result of actions by unidentified persons | 17 | 22 | 10 | 13 | 62 |
| Civilian population as a result of clashes between the armed forces and FMLN | 1 | 4 | - | 8 | 12 |
| Off-duty military personnel as a result of terrorist acts | - | - | - | - | - |
| Total | 30 | 138 | 22 | 42 | 231 |

Source: Human Rights Commission.

a/ Provisional data.

b/ This category saw an increase in August when a former soldier threw a hand grenade while a dance was being held in Los Amates Canton, Comasagua, Department of La Libertad.

Table 3. Statistics from the Human Rights Office of the Armed Forces General Staff

| Category | August | September | Total |
|---|---|---|---|
| Murders of civilians by terrorist delinquents | 2 | 3 | 5 |
| Persons injured or maimed by terrorist delinquents | 4 | 3 | 7 |
| Attacks on the civilian population by terrorist delinquents | 16 | 11 | 27 |
| Abductions of civilians by FMLN | 4 | 74 | 78 |
| Acts of violence or threats against civilians by FMLN | 1 | 3 | 4 |
| Forcible recruitment of children under 15 by FMLN | - | 51 | 51 |
| Persons killed by FMLN mines | - | - | - |
| Persons maimed by FMLN mines | 1 | - | - |
| Attacks on property by FMLN | 17 | 22 | 39 |
| Total | 55 | 187 | 242 |

Source: "Statistical information on human rights violations for the month of September 1991", Human Rights Office of the Armed Forces General Staff.

## APPENDIX IV

### Statistics from non-governmental sources

Table 1. Statistics from the Legal Protection Office of the Archdiocese of San Salvador

| Category | August | September | Total |
|---|---|---|---|
| Persons arrested | 9 | 7 | 16 |
| Persons arrested and disappeared | - | 4 | 4 |
| Persons disappeared | 9 | 5 | 14 |
| Persons arrested and later released | 15 | 8 | 23 |
| Persons abducted by guerrilla organizations | - | - | - |
| Prisoners of war held by guerrilla organizations (FMLN) | - | - | - |
| Forcible recruitment by guerrilla organizations | - | - | - |
| Deaths attributed to death squads | 5 | - | 5 |
| Deaths attributed to the army | 2 | 5 | 7 |
| Deaths caused by explosive devices | - | - | - |
| Deaths caused by cross-fire | - | - | - |
| Deaths occurring during army operations (civilians and combatants) | 1 | 4 | 5 |
| Deaths occurring during clashes, ambushes or army patrols (civilians and combatants) | 62 | 37 | 99 |
| Murders attributed to guerrilla organizations | 3 | - | 3 |
| Army and security force casualties | 78 | 24 | 102 |
| Total | 184 | 94 | 278 |

Source: Legal Protection Office of the Archdiocese of San Salvador.

Table 2. Statistics from the Human Rights Commission of El Salvador

| Category | August | September | Total |
|---|---|---|---|
| Arrests by the armed forces | 67 | 61 | 128 |
| Arrests by FMLN | 0 | 2 | 2 |
| Disappearances attributed to the armed forces | - | - | - |
| Disappearances attributed to FMLN | - | - | - |
| Unattributable disappearances | 9 a/ | 12 | 21 |
| Deaths attributed to the armed forces | 111 | 38 | 149 |
| Deaths attributed to FMLN | 3 | 1 | 4 |
| Deaths caused by unidentified persons b/ | 30 | 10 | 40 |
| Unattributable deaths | 4 c/ | 3 | 7 |
| Total | 224 | 127 | 351 |

Source: Human Rights Commission of El Salvador (non-governmental).

a/ Cases of persons who disappeared while travelling between their home and place of work or study and did not reach their destination.

b/ Heavily armed unidentified civilians acting with the direct or indirect protection of the State.

c/ Victims of explosive devices and/or cross-fire where responsibility cannot be attributed to either of the parties to the conflict.

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SECURITY COUNCIL
Forty-sixth year

Note by the Secretary-General

Corrigendum

Page 35

Paragraph 137 should read

137. The first comment that must be made is that during the reading of the summary the Court gave members of the jury absolutely no guidance or instructions to help them understand the list of evidence in the case or weigh evidence which had sometimes been seriously contested and, in general, to prepare them for their functions in accordance with principles which, though not expressly stated in Salvadorian law, are widely accepted by contemporary doctrine in the area of penal procedure. 31/

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Replace appendix I by the following:

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